

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In Re:)	
)	Case No. 08-61570
)	
Yellowstone Mountain Club, LLC,)	
)	
Debtor.)	

THE HON. RALPH B. KIRSCHER, presiding

TRANSCRIPT OF PROCEEDINGS

Butte, Montana
May 15, 2009

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1 YELLOWSTONE MOUNTAIN CLUB BANKRUPTCY

2 BUTTE, MONTANA

3 - - -

4 BE IT REMEMBERED THAT this matter came on for
5 hearing on May 18, 2009, in the United States Bankruptcy
6 Court, District of Montana, The Hon. Ralph B. Kirscher,
7 presiding:

8
9 The following proceedings were had:

10
11 THE COURT: Please be seated.

12 Who wishes to give me an update? Mr. Patten?

13 MR. PATTEN: Your Honor, I'll allow the others to
14 give details, but after we left the courthouse Friday
15 evening, settlement discussions continued and progressed
16 over the weekend. And I believe that there's now a fully
17 executed term sheet, that a copy can be provided to the
18 Court. And I'll let Mr. Levy and Mr. Green describe the
19 details.

20 There remain a couple objections that have not
21 been resolved. Most of the other objections have been
22 resolved. They haven't necessarily been reduced to
23 writing, and Mr. Birinyi can describe which ones have been
24 resolved and which ones remain. But I think we're down to
25 a couple objections; and, otherwise, we'll have everyone on

1 board with the plan. The plan will be modified per the
2 term sheet. It's our view that it doesn't require
3 resolicitation of bids that we can simply --

4 THE COURT: Is it consensual?

5 MR. PATTEN: -- incorporate it into the plan.

6 THE COURT: Because it's consensual?

7 MR. PATTEN: Yes.

8 THE COURT: It will be a consensual plan --

9 MR. PATTEN: Yes.

10 THE COURT: -- provided the two objectors are
11 resolved?

12 MR. PATTEN: Yes.

13 THE COURT: Okay. That's progress.

14 MR. PATTEN: And with that, I'd leave it to
15 Mr. Green.

16 THE COURT: Okay. I'm not going to volunteer a
17 lot for the record at this point if there's a resolution.

18 So Mr. Green.

19 MR. GREEN: Good morning, Your Honor, and thank
20 you again for your help last week. We're all thrilled to
21 be here with signed settlement term sheets.

22 THE COURT: Have they been signed?

23 MR. GREEN: Yes.

24 THE COURT: Wonderful.

25 MR. GREEN: Your Honor should know that there's

1 one exhibit to the term sheet, which is the new credit
2 agreement for the 80 million loan portion of the
3 consideration. And Mr. Levy and I are around 15 percent
4 through just marking that document up. It's going to take
5 us another hour to finish it. We're going to go into a
6 conference room while you hear the objections. We have
7 every confidence that we will have no problem finishing it
8 up. But the constituents wanted that to be attached as an
9 exhibit, and we've all agreed to that. But I did want to
10 alert the Court to that.

11 THE COURT: Okay. Mr. Levy.

12 MR. LEVY: Yes, Your Honor. This settlement
13 addresses all the concerns of all parties - the UCC, the
14 debtors, and the prepetition lenders - to address all of
15 the outstanding litigation matters, appeal matters, and the
16 plan objections. There is one matter we'd like to approach
17 the Court to -- approach the bench to discuss with the
18 Court relating to the settlement.

19 THE COURT: Okay. I have a question concerning
20 your settlement documents. Now, what is your intention as
21 far as -- or is that document between the parties and to be
22 left between the parties, or is that something that would
23 be docketed?

24 UNIDENTIFIED SPEAKER: It's incorporated into the
25 plan.

1 UNIDENTIFIED SPEAKER: It's incorporated into the
2 plan.

3 MR. PATTEN: Your Honor, the terms of the
4 settlement will be incorporated into the plan and modify
5 the plan.

6 THE COURT: Okay, okay. Mr. Chehi.

7 MR. CHEHI: And just to be a little bit more
8 clear about that, the plan will incorporate a Rule 9019
9 settlement, which will, in effect, be a global settlement.
10 Effectuating this, various terms of the plan will be
11 modified to conform to the settlement, to make provisions
12 for various things that are required under the settlement
13 agreement. And the parties hope to accomplish that, you
14 know, as rapidly as possible, given the fact that it takes
15 awhile, as you understand now, to actually document the
16 agreements. We should be able to get to the plan documents
17 rather rapidly.

18 THE COURT: Okay.

19 MR. CHEHI: And then, you know, to the extent
20 that the Court would require a resolicitation of parties
21 other than, I think, the secured creditors who had rejected
22 the plan, the Class 3 and Class 8, you know, there would be
23 some sort of, hopefully, accelerated notice of some sort to
24 whoever the Court would feel requires to be resolicited, if
25 anybody. There would have to be an opportunity, I think,

1 for the Class 3 and class 8 lender, holders of lender
2 claims to recast their ballots in favor of the plan,
3 because at this point, they've reject the plan.

4 THE COURT: Okay.

5 MR. LEVY: And if I could just say one point on
6 that. While we're not soliciting or resoliciting outside
7 of the process, we have consulted with lenders holding a
8 majority of the interest in the loan. Those lenders
9 constitute requisite lenders under our credit agreement,
10 those lenders have authorized and directed the prepetition
11 agent to enter into the settlement agreement, and have also
12 indicated to the agent that they intend to vote in favor of
13 the plan as modified contemplated by the term sheet.

14 THE COURT: Very good, thank you.

15 Mr. Patten.

16 MR. PATTEN: Well, I'm not sure that resoliciting
17 ballots is necessary. I think, in our view, we wanted to
18 get confirmation completed today, if possible.

19 THE COURT: Well, if, in fact, it's consensual
20 and we have representatives that can change their ballots
21 or withdraw any objections or can agree to file, I mean I
22 think we can move the process.

23 MR. CHEHI: Your Honor, as it became apparent in
24 connection with the solicitation process, there are
25 numerous, numerous holders of prepetition lender claims

1 that exceed the holders' -- the identity of the holders on
2 the steering committee, which hold, you know, a dominant
3 amount of claims, and the like, but are nevertheless not
4 all of the holders. I think it will be necessary to have
5 an opportunity for the -- to resolicit those lenders who
6 have already voted to change their vote on the plan.
7 Because we can't change their votes on the plan. We
8 couldn't vote for them in the first place, the steering
9 committee couldn't vote for them in the first place. The
10 steering committee has indicated, pursuant to the
11 settlement, that they are going to be recommending that
12 people support the plan as modified incorporating the
13 settlement. And we, you know, are highly confident that
14 will be the outcome here. But we actually have to go true
15 that mechanic, which again, we can do on a, you know, very
16 accelerated basis, giving notice to the folks what it is,
17 probably attaching a copy of this and saying that the plan
18 is going to be conformed and we ask that you vote for --
19 you know, we'll give them a new ballot, or something, that
20 reflects this, and they can vote to accept the plan as
21 modified consistent with this.

22 MR. PATTEN: I'm not sure if there's another
23 purpose being accomplished here, but we have, under the
24 ballots that have been filed - and we filed the ballot
25 reports with the Court this morning - we have the

1 affirmative ballots of several impaired classes that -- we
2 meet the balloting requirement. So I'm not sure that we
3 need the prepetition lender's vote in order to overcome
4 that hurdle. I'm not sure how we're going to --

5 THE COURT: Well, it's probably a cleaner deal if
6 they're all on board.

7 MR. PATTEN: Yes.

8 MR. MOORE: Your Honor, if I may, Paul Moore or
9 CrossHarbor.

10 I think we can address it in a different way.
11 I've had this issue in other cases. If the Court were to
12 approve the settlement and the plan incorporates the
13 treatment under the settlement, then the case law suggests
14 that they are unimpaired. We change their treatment to
15 unimpaired, and we treat them in accordance with the
16 settlement. And I've got a couple citations for that
17 proposition, if you would like.

18 THE COURT: That may be the way to go. I'm
19 sensing that, that Mr. Chehi and the prepetition lenders
20 and the lending -- the prepetition lenders, he'd like to
21 have their ballots in there.

22 MR. CHEHI: We don't want to disenfranchise the
23 numerous holders of the claims. And, again, I think it can
24 be done on a very expressed type of basis. Everyone has
25 been kept are pretty well informed.

1 THE COURT: When you say that, how long do you
2 think? What are we talking about on an "expressed basis"?

3 MR. MOORE: Your Honor, when the ballots -
4 (inaudible) - mailed, we got 111 ballots back within a
5 week. So we were able to convince our lender group that it
6 was important and they should vote. We didn't tell them
7 how to vote; we just told them they should. I would
8 suspect if we have the authorization of the appropriate
9 ballot, we could push it to our lenders today or tomorrow
10 morning with an indication to return it probably by Friday
11 before the holiday weekend. And I would expect to get back
12 most of them.

13 MR. BIRINYI: Your Honor, KCC, our balloting
14 agent --

15 THE COURT: I'm sorry, you need to --

16 MR. BIRINYI: Your Honor, Richard Birinyi.

17 KCC, the balloting agent, has the capacity,
18 literally -- they have an office in Memphis. So they have
19 the capacity to get something into overnight mail almost
20 instantaneously. If we decide that we have to go that way,
21 then we could send it out probably before the close of
22 business today with a balloting deadline of Friday, as
23 suggested.

24 THE COURT: Well, I guess I'm wondering, can
25 something like that, rather than mailing it, can it be

1 e-mailed as an attachment to your group?

2 MR. LEVY: We have an electronic posting system
3 called "Interlinks" that all of our lenders are linked to.
4 So if we have the new ballot, they would get it
5 instantaneously through Interlinks.

6 MR. CHEHI: And the benefit of doing the
7 solicitation and the resolicitation of those lenders for
8 purposes of getting their votes and acceptance is, then,
9 once that class is voted by the requisite majorities, then
10 it binds, it's binding on everybody. And I think that's
11 just the right thing to do here.

12 THE COURT: Yeah, yeah. I don't disagree. Given
13 the numbers that we're dealing with, the numbers of people
14 that we're dealing with, I don't want to hold this thing up
15 any longer than it needs to be. But if we can get some
16 stuff out to them through the various connections that were
17 just discussed by counsel, we could have something back --
18 I mean we might be seeing those coming back to the, to the
19 balloting agent by this afternoon, potentially.

20 MR. PATTEN: Well, Your Honor, I guess what I
21 would propose, then, is, one, that the Court order a short
22 deadline on the reballot of that class. Can we proceed
23 with confirmation today, have everybody in town for it, and
24 then maybe just hold off, hopefully, on the order until
25 these ballots come in?

1 And I promised Mr. Whitmore I would advise -- I
2 said "everybody was on board". I'm not speaking for the
3 Class B members when I say that.

4 THE COURT: They're not on board?

5 MR. WHITMORE: Your Honor, we have not been
6 invited to participate in the settlement to date. I stand
7 here afraid that I'll be struck by lightening if I -- we
8 want there to be a settlement, we're supportive of a
9 settlement, but there are some -- we have objected to the
10 plan. We've filed a conditional objection. We received an
11 extension of time to object to the plan until two days
12 after the auction. As you know, that timing ended up a
13 little bit different. We have some things that we're going
14 to need added to the plan just to protect our interests as
15 Class B holders because we didn't get baked into the
16 settlement. And so we want to reserve our rights with
17 respect to the plan of reorganization just until a couple
18 of sentences can be added, frankly. And so it sounds like
19 there's going to be enough time anyway for that to be
20 accommodated.

21 But our principal concern is that the Class B
22 holders have an equity stake at the very -- you know, in
23 the scheme of things, they had a 1 percent -- each had a
24 1 percent stake in the Yellowstone Mountain Club. And at a
25 time, that was worth a lot of money. It was an

1 unencumbered asset. And due to a variety of things that
2 occurred, that equity stake became diminished in value
3 greatly. And that was a result of, we believe, some
4 wrongful acts by some various parties.

5 And we've commenced litigation against
6 Mr. Blixseth, Edra Blixseth, and BGI. And in connection
7 with that, we're seeking equitable subordination of the
8 equity stakes that BGI and Edra have in the, in the club.
9 And I believe Mr. Blixseth's equity stake has already been
10 departed with or he's transferred that away.

11 But we may -- we would like to preserve the right
12 to do whatever the Class B holders want to do to vindicate
13 their personal rights - not rights that belong to the
14 estates - in connection with this whole mess. And we're a
15 little bit concerned that the settlement involves turning
16 over of control of the liquidating trust to Credit Suisse;
17 although, we're on the board, as well. And there are some
18 provisions in the plan that provide that only the
19 liquidating trustee has the right to pursue claims
20 objections, and those claims objections would include
21 subordinations of claims.

22 And we are very -- we just want to make sure that
23 our rights to pursue our existing equitable subordination
24 litigation against Edra and BGI is preserved and, frankly,
25 to preserve whatever equitable subordination rights we may

1 want to pursue as it may -- it won't stop the sale, won't
2 stop the settlement, but at the back end of the waterfall,
3 we want the right to come to Court and be heard about where
4 we ought to sit in that. And if that can be accommodated,
5 we're more than happy to step aside. We don't have any
6 real concerns about the other economics of the settlement.
7 We're supportive of it, we're happy that it occurred.

8 But we can't -- we're a little bit reluctant to
9 stand here today and say, "We'll just let other parties
10 completely rewrite the plan, and we'll all approve that
11 whatever they say is just fine."

12 THE COURT: Well, have you discussed these two
13 sentences with Mr. Patten or counsel?

14 MR. WHITMORE: I've tried, but they just finished
15 this term sheet, I think, in the middle of the night, Your
16 Honor.

17 THE COURT: Okay.

18 MR. CHEHI: You know, we've indicated --

19 THE COURT: Mr. Chehi.

20 MR. CHEHI: -- to counsel for the B's that we are
21 amenable to making a statement on the record, which I'll
22 make now. And that is that: This settlement and the plan
23 of reorganization is without prejudice to the rights and
24 opportunities of the liquidating trust and the "B" holders
25 to reach some sort of resolution or settlement of their

1 interests in respect of the waterfall - which is the
2 liquidating trust assets at the end of the day - such that,
3 you know, following the effective date of the plan, the
4 liquidating trust and the B's can enter into some sort of
5 understanding or agreement about how their interests might
6 be treated.

7 I would also say that, you know, the B's just
8 admitted their equity. They seem to have a dispute with
9 other equity in the case. And, you know, we don't have a
10 problem if they want to reserve their rights to, in some
11 sense, subordinate, you know, other equity interests that
12 otherwise would be pari passu with them to -- to them, but
13 we're not agreeable to having them reserve their rights to
14 somehow take a second bite at the apple and equitably
15 subordinate any claims of any creditors, which are part of
16 this waterfall scheme. Because this settlement represents
17 a compromise of the various -- the priorities that would
18 otherwise exist under the code and otherwise with respect
19 to our secured claims and our deficiency claims, which all
20 are claims and not equity interests at the end of the day.
21 And so, that, we would not be agreeable to, but to the
22 extent they want to reserve their rights to equitably
23 subordinate other equity interest in the case, we don't
24 have a problem with that. I don't know what the other
25 parties have to say.

1 And, again, we all do look forward to working to
2 come up with a consensual resolution, including some
3 language that we could put in the confirmation order or the
4 plan that would reflect what I've just said.

5 MR. WHITMORE: I'm sorry to -- I don't want to
6 dwell on this at this point, but I think Mr. Chehi started
7 out by indicating that if Credit Suisse elects to enter
8 into an agreement with us, that he would remain flexible
9 enough so that that agreement could be effected. And in
10 terms of preserving our rights, I was a little concerned
11 about that stopping short of what we're asking for.

12 We're simply saying that we have some personal
13 rights. Equitable subordination isn't really an estate
14 right; it's really our right. We're not baked into the
15 revised waterfall right now and -- because we're not a
16 party to the agreement. And if they want to change the
17 waterfall, all we're asking is that whatever equitable
18 rights we may have to come to the Court and ask for an
19 adjustment of that waterfall down the road, based on the
20 harms that other people in this case have done to us, our
21 personal rights, that those are not forfeit as a result of
22 an agreement where everybody else has shared consideration
23 and worked out their own issues and not included us. And
24 I --

25 THE COURT: Well, Mr. Whitmore, you're talking

1 about claims that the "B" members have against other equity
2 interests.

3 MR. WHITMORE: Well, that's part of it. But
4 there's also a claim, Your Honor, that Credit Suisse, by
5 making -- by engaging in this lending transaction with
6 Mr. Blixseth may have done so with a knowledge that the
7 effect of what was going to happen was that Mr. Blixseth
8 wasn't going to be sharing -- or the equity distributions
9 that should have happened to our class at the time didn't
10 happen. You know, that's something -- it's not in
11 litigation now; hopefully, it will never be in litigation.
12 We're trying to, you know, work through that issue. But if
13 there's something that a nondebtor did that caused harm to
14 another nondebtor, then, you know, all rights and
15 privileges related to, you know, those claims are
16 preserved.

17 THE COURT: You know, it sounds like the B's
18 should be -- you want so much of this money. You should be
19 putting in some money.

20 MR. WHITMORE: Well, Your Honor, I think what
21 we're, what we're possibly talking about would be
22 contributing the claims that the Class B holders have
23 against certain parties into the liquidation trust and then
24 joining forces with the liquidating trust to work
25 effectively rather than potentially being at

1 cross-purposes. So we are trying to -- we're just trying
2 to work through that issue.

3 And while we're getting that sorted out, since
4 this all just happened in the middle of the night, I'm just
5 asking the Court not to approve a settlement that affects
6 our rights; certainly, at a minimum, to say that our right
7 to object to the plan is preserved, and we'll deal with it
8 later.

9 THE COURT: Well, but you're not a signatory to
10 the term sheet, right?

11 MR. WHITMORE: I'm sorry?

12 THE COURT: You're not a signatory to the term
13 sheet.

14 MR. WHITMORE: I'm not a signatory to the term
15 sheet. And if nothing --

16 THE COURT: How can whatever rights you have be
17 affected?

18 MR. WHITMORE: Well, as long as this Court
19 doesn't go through the short step, short step that someone
20 was suggesting that, by approving the agreement, that
21 somehow it becomes dictated over our potential objections
22 to the plan, that the plan will be changed in accordance
23 with the term sheet, you're right, we're not a party to it.
24 And if the Court wants to approve it, subject to a
25 reservation of whatever rights we have to object to the

1 plan, and those aren't affected, that's fine for purposes
2 of this morning.

3 THE COURT: Mr. Patten.

4 MR. PATTEN: Your Honor, it seems to me that the
5 equity is the last person in line to get paid. And if,
6 ultimately, there's money or property to distribute to the
7 equity, then the A's and the B's can fight over that money
8 at that point in time. And I don't think the plan is
9 preclusive of the A's and B's fighting over whatever would
10 be distributed to them.

11 I do think, though, that the settlement reach
12 with Credit Suisse by the estate, by the debtors, is
13 binding on the B's. The B's claim derive through the
14 debtors, and so it seems to me that the settlement that --
15 if this Court approves it, that settlement will be binding
16 on the B's. To the extent the B's have claims against
17 other parties, then that's different. And if the B's and
18 the liquidating trust want to work out some arrangement
19 where they contribute their B's claim into the liquidating
20 trust, as long as the "A" interests have the ability to
21 participate in the discussions, the, you know, objective,
22 if the A's are somehow being cut out, then I don't think
23 there's any, any problem that we have with the B's.

24 It just seems to me that the plan doesn't
25 preclude what Mr. Whitmore is concerned about, and that's

1 just a fight that will have to be made down the road if
2 there's any property to distribute to the equity.

3 THE COURT: Okay.

4 MR. GUTHALS: Your Honor, this is Joel Guthals in
5 Billings. May I speak?

6 THE COURT: You may.

7 MR. GUTHALS: Thank you, Your Honor. Today, Your
8 Honor, I'm representing Mr. Blixseth, who's objected to the
9 confirmation of the plan; and also Desert Ranch, LLLP,
10 which is a transferee of the claim of Prim.

11 And I have filed objections to confirmation on
12 behalf of both of my clients, neither of whom are
13 signatories to the settlement nor know anything about the
14 settlement. I understand from the dynamics of this case,
15 as I have been involved in it for quite awhile, that the
16 plan is likely to be confirmed, given the settlement that
17 is reached. But I did want to state for the record that
18 the settlement, to my knowledge, does not resolve the
19 objections of my two clients.

20 THE COURT: Okay.

21 MR. GUTHALS: Thank you.

22 MR. AMSDEN: Your Honor, John Amsden, counsel for
23 Ross Richardson; Chapter 7 trustee for Yellowstone Club
24 World.

25 We had filed limited objections to the

1 confirmation of the plan. I've talked to Mr. Patten and
2 Mr. Birinyi about that, and I think that they are resolved.
3 And, hopefully, with some clarifying language, either
4 separately or a part of the plan, we would withdraw our
5 objection. The general concept is that Ross Richardson
6 will have a full and fair opportunity to establish the
7 amount and proper classification of his claim and that the
8 exculpatory provisions in the plan won't affect any of
9 Mr. Richardson's potential claim against any other persons
10 or matters outside the scope of various principals, either
11 prepetition or postpetition. But we're working with
12 Mr. Patten on that and hope to get that resolved.

13 THE COURT: Okay. Ms. Francis?

14 MS. FRANCIS: Yes, Your Honor. I'm here on
15 behalf of the IRS.

16 I do believe we can reach a stipulation, but due
17 to the focus on all the many ongoing hearings and
18 settlement discussions, haven't had a chance to finalize
19 that. My concern is that there's some outstanding tax
20 returns that remain to be filed. I believe that the
21 debtors have indicated that they would endeavor to file
22 those in the near future. I would like a defined date.
23 And I don't think the plan can be confirmed unless the tax
24 returns are filed because you must pay the priority claim,
25 and we cannot determine what the total priority claim is

1 until the tax returns are filed. I've itemized the
2 remaining returns in our objection.

3 So I would ask that we be allowed to file a
4 stipulation and that the confirmation be subject to both of
5 us filing the stipulation so we can work out -- I think
6 it's highly likely we will resolve these, but until that's
7 done, I can't withdraw my objection.

8 THE COURT: Okay.

9 MR. PATTEN: Your Honor, I'm told that the
10 unfiled return is a fourth-quarter 2007 941 return. We
11 believe and will commit to file it before the effective
12 date of the plan.

13 THE COURT: Okay. Is that correct, Ms. Francis?

14 MS. FRANCIS: As long as they have a date. I
15 think they were intending on doing that, in filing the
16 effective date. And then the priority claim has to be
17 paid. I think they indicate they're going to pay it, but
18 I'm not sure if there's enough money - based on everything
19 else, because I haven't seen the settlement terms - to pay
20 it. So our priority claim has to be paid.

21 And I don't know if the settlement has enough
22 money to pay us, Andy.

23 MR. PATTEN: Unless that claim is unbelievably
24 huge, there will be sufficient money to pay a priority tax
25 claim on the effective date.

1 THE COURT: And it's just a fourth-quarter 941,
2 right?

3 MR. BIRINYI: That's the only one that's unfiled.
4 There is some existing claim --

5 THE COURT: Oh, okay.

6 MR. BIRINYI: -- that we do know about that was
7 included in the numbers that we talked about last week,
8 Your Honor. I think the taxing authorities' total were --

9 MR. WHITMORE: Well, actually, it's the
10 Yellowstone Mountain Club's fourth quarter, the Yellowstone
11 Development's fourth quarter 2007, the Yellowstone Club
12 Construction's fourth quarter 2007, and the partnership
13 return for 2006 and 2007 for Yellowstone Club Construction.

14 THE COURT: Is that your understanding?

15 MR. PATTEN: Yes.

16 THE COURT: Okay. Mr. Green -- oh.

17 MS. WHITNEY: Good morning, Your Honor. Teresa
18 Whitney with the Montana Department of Revenue.

19 We had also filed an objection based on the
20 exculpation provision in Paragraph 8.4 of the plan. And we
21 have been in contact with Debtors' counsel regarding
22 proposed language that we would like to see in the plan
23 regarding the Montana Department of Revenue.

24 And I believe I was sent an e-mail late last
25 night or late yesterday, and I did not have an opportunity

1 to review the language. They made some changes to it.
2 I've been assured that it basically encompasses what we
3 requested in our proposed language. And once I get back to
4 the office, I will review that language. If it does
5 substantially state what we wanted, then our objection is
6 cured in that plan.

7 THE COURT: Okay, thank you.

8 MS. WHITNEY: Thank you.

9 MR. BIRINYI: Your Honor, on that issue - Richard
10 Birinyi again - the IRS wanted some additional language in
11 the plan, too. And the language that I circulated Saturday
12 morning attempted to address both the IRS-requested
13 additional language and the Montana Department of
14 Revenue's. So we will work that out in the process of
15 producing the modified plan documents so that it will be
16 acceptable to both the IRS and the Montana Department of
17 Revenue.

18 THE COURT: Okay, very good. Mr. Green.

19 MR. GREEN: Your Honor, I'm not sure -- I
20 understand you have a copy of the settlement term sheet.
21 I'm not sure if you're interested in us describing the
22 terms of it. And there's also one matter, as Mr. Levy
23 mentioned, that we wanted to discuss with you at bench
24 side.

25 THE COURT: Okay.

1 MR. GREEN: So however you would like to proceed.

2 THE COURT: For the sidebar, how many are
3 involved?

4 UNIDENTIFIED SPEAKER: Many. A big, happy
5 family.

6 THE COURT: Four people?

7 UNIDENTIFIED SPEAKER: Five people.

8 THE COURT: Five people? You know, because of
9 the limitation of -- I mean there's quite a bit of space up
10 here, but there's some limitation. Why don't the five --
11 whoever is involved with the sidebar, let's just go in the
12 jury room right back there.

13 Okay, we'll be in recess for just a moment.

14 (A brief recess was taken.)

15 THE COURT: Please be seated.

16 MR. GREEN: Your Honor.

17 THE COURT: Mr. Green.

18 MR. GREEN: Barry Green for CrossHarbor Capital.

19 I'm here with Evan Levy from Skadden-Arps, representing
20 Credit Suisse.

21 As Your Honor knows, we have a fully executed
22 settlement term sheet. And Mr. Levy and I will walk
23 through the basic parameters of that, starting with,
24 frankly, who the parties are to the settlement term sheet.
25 They are each of the debtor entities, so Yellowstone

1 Mountain Club, Yellowstone Development, Big Sky Ridge, and
2 Yellowstone construction -- Yellowstone Club Construction
3 Company.

4 Then the Official Committee of Unsecured
5 Creditors has executed the document; as has Credit Suisse,
6 as prepetition agent for the prepetition lenders; as has
7 the acquirer under the definitive agreement, the parties
8 submitting the stalking-horse bid, has also executed the
9 settlement term sheet.

10 In addition, a number of CrossHarbor entities
11 have joined in the settlement term sheet for purposes of
12 reflecting their agreement to the releases set forth in the
13 term sheet. And these CrossHarbor affiliates are entities
14 that have interests within the Yellowstone Club either
15 because they are the DIP lender or they hold an interest in
16 the prepetition loan or they are the ultimate parent
17 entity. So that's who the parties are to the document.

18 The document, as stated earlier, effectuates a
19 global settlement between these parties relating to the
20 matters that have been before the Court. Very quickly,
21 I'll hit some of the highlights, and Mr. Levy will chime in
22 from time to time, I'm sure, as well.

23 There are numerous stipulations, Your Honor,
24 regarding dismissal of the pending appeal for the
25 CrossHarbor DIP loan. That's going to be withdrawn, and

1 the parties agree to support the plan as modified by this
2 term sheet. In addition, the parties agree to support the
3 Skadden-Arps fee applications to the extent that money is
4 left within the interim DIP for payment of their fees; and,
5 likewise, the parties agree to support the motions for
6 CrossHarbor's legal fees to the extent funds are available
7 within the CrossHarbor final DIP loan for payment of those
8 fees. Obviously, both of those, to the extent required,
9 are subject to your court's -- to the Court's approval.

10 Do you want to do the next part about the
11 settlement in terms of the lawsuits?

12 MR. LEVY: Sure. The parties have agreed, as
13 between the debtors, the UCC, and the prepetition agent of
14 the prepetition lenders to dismiss all of the litigation in
15 the two adversary proceedings. We had made a request -- or
16 are making a request to the Court to consider the Court's
17 rulings with respect for interim and partial rulings with
18 respect to the adversary proceedings in light of the
19 settlement of the overall proceedings. None of those
20 settlements will affect any claims that have been asserted
21 against Mr. Blixseth, which are still before this Court.
22 The settlement also provides for releases of all parties
23 for all the claims that were made in those adversary
24 proceedings other than the actions that remain before this
25 Court with respect to Mr. Blixseth.

1 Okay. The term sheets -- or in addition to
2 stipulations, the term sheet had three components. One
3 stipulation of the parties is really dealing with the
4 settlement of litigated matters; secondly, agreed-upon
5 modifications to the CrossHarbor definitive agreement with
6 the debtors to acquire the equity in the reorganized
7 debtors; and, third, agreements to modification of the plan
8 of reorganization to address both the changes in the
9 definitive agreement and the economic rights and sharings
10 of the various parties.

11 Do you want to talk about the definitive
12 agreement?

13 MR. GREEN: Yeah. Why don't I start with how the
14 definitive agreement is being modified. And as Your Honor
15 noted last week, some of these may sound familiar. First
16 of all, the purchase price under the definitive agreement
17 is being increased from 100 million to 115 million, the
18 debt portion will increase from 70 million to 80 million,
19 and the cash portion will increase from 30 million to
20 35 million.

21 We then have a series - and I won't go into
22 tremendous detail on them - a series of amendments to what
23 is a permitted construction financing under the, under the
24 definitive agreement loan documents that will be delivered.
25 And they relate to including that an institutional lender

1 must provide it, a \$45 million aggregate limit on vertical
2 construction, subordinate senior financing with 50
3 residential density units being effected at any one point
4 in time. That 50 represent as decrease from 100, and the
5 45 million is a new provision. There's also provisions
6 limiting loan to costs as well as payments to affiliates of
7 the CrossHarbor and Discovery entities to the extent that
8 those fees are -- need to be market-rate based.

9 We've also agreed, as we indicated at the
10 beginning of the hearing, that we would use a form of
11 credit agreement similar to that that was used in
12 connection with the original loan. Mr. Levy and I will
13 excuse ourselves shortly after this presentation to finish
14 marking that document up. We should have that done within
15 90 minutes, or so.

16 I think the other agreement that also relates to
17 the amendments to the definitive agreement and is really a
18 CrossHarbor/Credit Suisse matter is we are giving Credit
19 Suisse the ability to co-invest in the acquisition of the
20 reorganized debtors. They'll have that open until we
21 actually close and the plan becomes effective.

22 Want to do the plan modifications?

23 MR. LEVY: I thought I'd walk through the
24 proposed modifications to the plan of reorganization.
25 Firstly, the trade creditor fund, which was identified in

1 the plan of reorganization as \$7.5 million, will be doubled
2 to \$15 million. Also, the control and governance of that
3 trade creditor fund will be modified to provide that it
4 will be administered by the official unsecured creditors
5 committee in consultation with both CrossHarbor and the ad
6 hoc committee members.

7 In addition to that, the liquidating trust will
8 be established with more substantial funds to pursue claims
9 and recoveries for all of the creditors. The amount being
10 funded to liquidating the trust at closing will be
11 increased by \$2 million, from \$375,000 to \$2,375,000.

12 The governance of the liquidating trust is also
13 being addressed. The liquidating trust will be established
14 with a seven-member board. Four of the members will be
15 appointed by the prepetition agent, two by the Official
16 Committee of Unsecured Creditors, and one by the ad hoc
17 Class B members. The parties have also agreed to designate
18 initial counsel for the liquidating trust. The concern is
19 the trust should proceed actively to maximize the recovery
20 of all stakeholders. And Holland & Hart has been
21 designated as the initial counsel to represent the trust in
22 obtaining further recoveries for the creditors and other
23 stakeholders.

24 There are certain designated matters. All
25 matters of the liquidating trust will require the majority

1 vote of the board with two exceptions: Any removal of
2 legal counsel or retention of additional legal counsel will
3 require a unanimous vote; and resolution or settlement of
4 certain designated matters, which are attached as an
5 exhibit to the settlement term sheet, will require a
6 five-member vote of the board.

7 Initially, those designated claims that require
8 the five-member vote, the Official Committee of Unsecured
9 Creditors will take the lead in attempting to settle those
10 matters during a 45-day period, will have the exclusive
11 right to seek to settle those claims in a 45-day period.
12 The distributions out of the liquidating trust were also
13 addressed and a waterfall of sorts was identified to
14 establish the ranking or priority of payments of recoveries
15 out of the liquidating trust. The first \$2 million will be
16 funded to the trade creditor fund to, again, increase the
17 trade creditor fund from \$15 million to \$17 million.

18 Secondly, up to \$15 million will be paid to CIP
19 lending. The DIP lender, the initial funder of the trade
20 creditor fund, they'll have the right to recover 15 million
21 to the extent the trade creditor fund was used to pay or to
22 purchase allowed Class 4 claims, unsecured claims.

23 Third in the waterfall, an additional \$10 million
24 will go to pay allowed Class 4 general unsecured claims.
25 And the balance of any recoveries will be shared pro rata

1 among all allowed unsecured claims -- all allowed claims,
2 both secured and unsecured.

3 It was also contemplated that the debt portion of
4 the payable under the definitive agreement, the \$80 million
5 promissory note, will be allocated exclusively to the
6 Class 3 claims, the prepetition secured claims.

7 Similarly, the prepetition claims will be
8 allocated all recoveries from the Farcheville property to
9 pay the prepetition secured and unsecured claims of the
10 prepetition lenders.

11 The agreement then provides the plan will be
12 modified to include the prepetition agent and prepetition
13 lenders as exculpated parties under Section 8.4 of the plan
14 and also provides for the exchange of mutual releases
15 between the parties that are parties to the settlement
16 agreement.

17 The settlement will be subject to Court approval
18 under Section -- or Bankruptcy Procedure 9019. And there
19 are contemplated provisions relating to the Court's
20 existing interim partial order and other orders that
21 reference those. As Mr. Green said, there is an ability to
22 co-invest.

23 The DIP loan. There's a request being made for
24 the Court to extend the DIP loan to the earlier of June
25 30th or the closing date under the definitive agreement --

1 June 30th?

2 UNIDENTIFIED SPEAKER: Oh I'm sorry, that's
3 the -- (inaudible, out of range of microphone.)

4 MR. LEVY: -- right, June 30th, to allow time for
5 the plan to be modified and the closing to occur without
6 the DIP loan expiring, which I believe expires this
7 Wednesday.

8 I think Mr. Green has two other things he needs
9 to add.

10 THE COURT: Okay. Mr. Green.

11 MR. GREEN: We're communicating very well these
12 days.

13 One of the stipulations that we neglected to
14 mention was that CIP Lending, which is the holder of the
15 first mortgage lien on Porcupine Creek, has agreed to
16 forbear from completing its foreclosure sale on that
17 property to the earlier -- to occur on July 30 and 30 days
18 after the effective date.

19 One additional item in terms of the way the cash
20 proceeds are flowing, just so Your Honor understands, with
21 respect to the 5 million increase in the purchase price,
22 the cash portion, a small amount of that is going to go, we
23 expect, to admins. I think it's approximately -- it's less
24 than \$1 million. As Mr. Levy mentioned, 2 million of that
25 is going to the -- from the disbursing agent to the

1 liquidating trust to cede expense money. And then the
2 unsecured creditors, through the trade creditor fund, gets
3 that money back.

4 In addition, to that, the gap amount, that little
5 bit over \$2 million will also be used for the payment of
6 general unsecured claims so that -- just wanted to make
7 sure that there was a full tracing of that full 35 cash
8 portion.

9 THE COURT: Mr. Beckett?

10 MR. BECKETT: Just a clarification: The gap
11 amount, the excess amount, does not go to general unsecured
12 claims; it goes back up into the trade creditor fund.

13 UNIDENTIFIED SPEAKER: Fair enough.

14 MR. BECKETT: And so while he's checking, Your
15 Honor, that brings the trade creditor fund - which was at
16 7.5, then went to 15 - to \$19 million.

17 MR. GREEN: Almost 20. I think we both agree
18 that's basically it.

19 MR. LEVY: Thank you, Your Honor.

20 THE COURT: Okay, thank you. I appreciate the
21 information.

22 Now, I just wanted to clarify -- well, let me
23 take up with the debtors. That's fine, thank you.

24 MR. PATTEN: Your Honor, what I'd like to do is
25 have Mr. Birinyi go through the other remaining objections,

1 most of which has been resolved. But I'd like Mr. Birinyi
2 to address those, and then we can -- we haven't resolved
3 every objection, so we'll need to go through the
4 evidentiary part.

5 THE COURT: Okay.

6 MR. PATTEN: And we'll do that after
7 Mr. Birinyi's done.

8 THE COURT: Okay. Mr. Birinyi.

9 MR. LEVY: Your Honor, if you have no more
10 questions for me or Mr. Green, we would like to continue
11 working on our new credit agreement.

12 THE COURT: Absolutely.

13 MR. LEVY: Thank you, Your Honor.

14 MR. BIRINYI: Good morning, Your Honor. Richard
15 Birinyi.

16 Let me go through -- I don't know how you have
17 them set up, but we have resolved with Mr. Grosvenor --

18 UNIDENTIFIED SPEAKER: Grosvenor.

19 MR. BIRINYI: Mr. Grosvenor. His objection was
20 basically -- or primarily to the amount of the cure listed
21 in the schedule of assumed contracts. He has actually got
22 a purchase and sale agreement for one of the condominium
23 units in the Warren Miller Lodge that has not closed. He
24 spent a significant amount of money in upgrades when the
25 company didn't have enough money to finish the build-out of

1 the unit and basically didn't -- the debtor didn't have
2 enough money to close. We put a zero amount in as a
3 placeholder for the cure. That closing is still to take
4 place. CrossHarbor, as the buyer, has assumed the
5 contract. There may be a shortfall in the payment of the
6 American Bank lien to get clear title. That's going to be
7 CrossHarbor's obligation under the plan. To the extent
8 that there's any little fluff cure amount, that's going to
9 be the estate's obligation. And the estate, as a Class 2
10 creditors, there's a bunch of construction liens on the
11 unit that will be cleaned up as a Class 2 claim.

12 So we just wanted to put on the record that we
13 have reached an agreement that the zero dollar amount in
14 the schedule is not binding because the people need to work
15 through the closing.

16 And I think his counsel is in court.

17 THE COURT: So I guess to clarify, how was his
18 vote?

19 MR. BIRINYI: I believe he voted in favor of the
20 plan.

21 THE COURT: Okay.

22 MR. BIRINYI: The objection was just to clarify
23 the zero dollar amount placeholder in the schedule of
24 assumed contracts.

25 THE COURT: Okay, very good.

1 MR. GARDNER: Your Honor, Trent Gardner for Mark
2 Grosvenor.

3 And we did vote for the plan. As Mr. Birinyi
4 stated, it was more of a clarification. We'll need to get
5 together after all of this to come up with a final dollar
6 amount for closing.

7 THE COURT: Okay, very good. Thank you.

8 MR. GARDNER: Thank you.

9 MR. BIRINYI: The next objection is, I think, the
10 LeMond Group. And there are two different -- there's
11 Mr. LeMond's individual claim -- or individual objection
12 that's based on his, I guess you would say the promotional
13 wage claim that's different than the settlement claim for
14 his "B" shareholders; and then there's his collective
15 claim.

16 As I understand it, based on the provision of the
17 term sheet that authorizes the unsecured creditors
18 committee to be the exclusive negotiating agent with
19 respect to those claims for the first 45 days, they're
20 withdrawing their objections.

21 THE COURT: Okay.

22 MR. BIRINYI: So I think that's resolved as an
23 adjunct to the term sheet.

24 THE COURT: Okay.

25 UNIDENTIFIED SPEAKER: Your Honor?

1 THE COURT: Yes.

2 MR. BIRINYI: Oh, there was one clarification.
3 As he stood up, I remembered that I forgot the one
4 clarification. And everybody is in agreement that -- and
5 it was not the intent, so this is -- it's no different.
6 Mr. LeMond and these other folks, because they have
7 residual claims, they are also pioneer members. And if you
8 recall under the provisions related to pioneer members to
9 achieve uniformity with respect to the pioneer membership
10 claims going forward, the plan provides that the old
11 membership agreements were rejected and those people had an
12 option to enter into new pioneer agreements with the
13 reorganized debtor going forward after the effective date.

14 Some of the language in that election on the
15 ballot could be read as saying that they waive their claims
16 that were independent of the pioneer membership claims,
17 which is the -- they are claims based on the settlement
18 agreement of their "B" -- of their shareholder litigation
19 and the -- and Mr. LeMond's claim. We've agreed that those
20 claims will continue to be in existence in the estate,
21 subject to your resolution, and not -- and nobody will
22 assert that the ballot waiver and election to take the new
23 membership waives those claims. I think I said that right.

24 MR. MITCHELL: That's accurate.

25 THE COURT: If you could come up and just

1 acknowledge that, and also state your name for the record.

2 MR. MITCHELL: I'm sorry, Your Honor. David
3 Mitchell, representing the LeMond claims.

4 And Mr. Birinyi has accurately reflected our
5 understanding.

6 THE COURT: Okay, thank you.

7 MR. BIRINYI: The next one is the Lone View.

8 THE COURT: The what? Pardon?

9 MR. BIRINYI: Lone View. The Lone View objection
10 is, again, more or less a clarification. The Lone View
11 transaction, Your Honor, was: Lone View bought nine lots,
12 nine platted lots. But the agreement was that they were
13 actually only going to buy six density units, and the nine
14 lots were going to be reconfigured into six lots.

15 My understanding is that the documentation of
16 that transaction is kind of confusing to the, to the
17 CrossHarbor real-estate lawyers. And I've spoken with
18 Mr. Elsaesser, and he's advised me that I can advise the
19 Court what we're going to do on that is enter into a side
20 letter as to how that's going to continue to close.

21 The substance, the economic substance of the deal
22 is going to be worked out between CrossHarbor and Lone
23 View, but the technical -- technically, it's still going to
24 be rejected as an executory contract because they need to
25 rework slightly the deals. The Goulston lawyers and

1 Mr. Elsaesser are going to work - triple tracks now - are
2 going to work over the next few days prior to us presenting
3 the actual confirmation order to achieve that resolution.

4 THE COURT: Okay.

5 MR. BIRINYI: And they're going to be in touch
6 starting this afternoon to try and resolve that. I don't
7 think it's, it's -- once again, I think it's a win-win for
8 both sides. So that's one of those deals where it's an
9 economic deal that makes sense to everybody because the
10 reorganized debtor gets three more density units that it
11 can sell; and the Lone View folks, they've basically
12 already paid for the nine units, so they're giving up three
13 density units. They just need to figure out how to
14 reconfigure that.

15 Now, Mr. Elsaesser also represents - and these
16 are the individuals that are the Yellowstone Club World
17 members - MacNaughton and -- I think they are, I think
18 there are eight of them. The same way as the LeMond folks
19 did, in recognition of the settlement agreement's term that
20 gives exclusive authority to the uniform creditors under --
21 yeah, to the -- "uniform". "UCC", and it always confuses
22 me. But the unsecured creditors committee, to negotiate,
23 they've agreed to withdraw their objection, as well. And
24 he authorized me to make that representation to the Court
25 this morning.

1 THE COURT: Okay.

2 MR. BIRINYI: The final one, and I have to --
3 because Mr. Bolter lives in -- Dubai, he lives in Dubai.

4 THE COURT: Did you say "Bolter"?

5 MR. BIRINYI: Mr. Bolter is the -- we've been in
6 communication with his counsel. He, as well, had an
7 objection that actually requests clarification on the cure
8 amount in the schedules. He's a member, a residential
9 member, but he had, shortly before the filing, put a large
10 deposit that is reflected as a credit right now on his
11 account. We have proposals out to him, and his client is
12 considering them. CrossHarbor has tentatively agreed to
13 indicate that they would agree that he could continue to
14 keep that credit on the books for use against rental of
15 company-owned properties in the future. He hasn't built
16 his house yet, apparently, so when he comes to the club,
17 which he does for about 20 to 30 days each year, he has to
18 rent the piece of property.

19 And I think that's the ones that have been
20 resolved. We already talked about the two taxing
21 authorities. The only ones that I believe -- we haven't
22 addressed the members.

23 Jonathan, did you put a placeholder in?

24 MR. ALTER: Jonathan Alter, Your Honor, on behalf
25 of the members.

1 We filed a conditional objection to the plan,
2 based upon a reservation of rights in light of what
3 happened at the auction. Suffice it to say that in light
4 of this settlement, the members are very gratified, very
5 happy a resolution could be reached. And we withdraw the
6 objection.

7 THE COURT: Very good. Thank you.

8 MR. ALTER: You're very welcome.

9 MR. BIRINYI: And Mr. Beckett reminded me --
10 what's Yoav's last name?

11 UNIDENTIFIED SPEAKER: Rubinstein.

12 MR. BIRINYI: Rubinstein. There was a glitch in
13 the -- one of the schedules that we're going to modify.
14 Mr. Rubinstein actually owns two residential memberships.
15 And the second one, somehow or another, was omitted from
16 the schedule. That's going to be added. So I think that
17 leaves us --

18 MR. WHITMORE: Your Honor?

19 THE COURT: Mr. Whitmore.

20 MR. WHITMORE: Your Honor, I just want to
21 clarify, if I could, for the Class B folks, who voted in
22 favor of the plan in its prior version and have filed a
23 conditional objection receiving an extension of time to
24 object, but I assume there will be an opportunity to review
25 the revised plan and to either withdraw our objection or

1 consent to the revised plan at some appropriate time, and
2 that that moment isn't passing here as we speak.

3 THE COURT: Okay. Mr. Birinyi.

4 MR. BIRINYI: Okay. Those are the resolved ones,
5 which leaves us with, by my count, three unresolved ones:
6 Mr. Sumpter, Mr. Blixseth, and Desert Ranch, LLP.

7 Mr. Blixseth and Desert Ranch, LLP, as I recall,
8 incorporate all of the Credit Suisse objections, so those
9 will require the testimony that Mr. Patten's going to give
10 you.

11 Mr. Sumpter, I believe, is actually a legal
12 argument that we can basically take up either now or later,
13 but at your convenience. I'm going to do the legal --

14 THE COURT: Is there anyone here representing
15 Mr. Sumpter?

16 MR. BIRINYI: Stephen Mackey filed the objection,
17 Your Honor.

18 THE COURT: Okay. Why don't you just give me a
19 brief -- and maybe we have to take that up later. We'll
20 see.

21 MR. BIRINYI: Mr. Sumpter has what's labeled as a
22 residential contract, membership contract, but it is
23 actually a nonstandard, if you will, residential contract
24 because it requires the payment of dues never. So it's got
25 free dues. Mr. Sumpter was -- and if -- we're prepared to

1 present testimony about this, if you want us to, but
2 Mr. Sumpter was a general manager at the time Mr. Blixseth
3 controlled the property.

4 On July 9th, at the same time that the marriage
5 settlement agreement was signed, Mr. Blixseth and
6 Mr. Sumpter signed a modification to his employment
7 contract and converted his prior, prior membership interest
8 into this unusual - as in it's the only one, as I
9 understand it - but this unusual residential agreement that
10 provided for no dues ever.

11 In addition, he has some estate assets that he
12 hasn't turned over. I think we have -- he has a Porsche
13 that the estate has title to, and he also has the liquor
14 license for the Buck's T-4 property in his name. Of
15 course, Montana liquor licenses have been to be in
16 individual names. But the tenor of his objection to the
17 plan is that the debtors, in their exercise of business
18 judgment, shouldn't reject his residential membership
19 contract.

20 The legal standard is business judgment and, I
21 think, given all the facts and circumstances, the high
22 probability that there's a dispute over his claim. In
23 point of fact, it may well be that it was a fraudulent
24 transfer at the time. Certainly, we take the position that
25 the change in the terms of his employment agreement for no

1 consideration was a fraudulent transfer so that his claim
2 is, in all likelihood, going to be objected to.

3 So we just think that the exercise of business
4 judgment is clearly on our side and that his objection,
5 therefore, is not well-taken to the, to the confirmation of
6 the plan because, like I say, he just says we should assume
7 it and, instead, we reject it.

8 THE COURT: You know, you are prepared to put on
9 some testimony to that?

10 MR. BIRINYI: Yes, Your Honor, if you want.

11 THE COURT: I think we should. Obviously, if he
12 raises the objection, he has the opportunity to attend this
13 hearing and raise it. Why don't we take it up.

14 MR. BIRINYI: Okay. So Mr. Patten was going to
15 do the witness examination, because I think -- I don't know
16 whether you want opening statements on the Blixseth and
17 Desert Ranch objections or just go into testimony.

18 THE COURT: I think we just go to testimony,
19 sure.

20 MR. BIRINYI: Okay.

21 THE COURT: Mr. Patten -- oh, Mr. McKay.

22 MR. MCKAY: Before we get into that, Your Honor,
23 I'm happy to come here on some more mundane matters just to
24 inform the Court that the debtor is current -- debtors are
25 all current, excuse me, in filing their monthly operating

1 reports. When I last left the office last Wednesday, the
2 first-quarter fee had not been paid. Mr. Rezentes, I
3 talked to him this morning, and it was his understanding
4 from a conversation in probably April in Andy's office that
5 those fees had been mailed as of Friday. So I haven't been
6 able to confirm that, but I'm sure that they're good for
7 the fees.

8 We have our outstanding motion to appoint a
9 trustee and, Your Honor, I will withdraw that at this time
10 without prejudice. Hopefully, things will go along and it
11 will not be required to refile.

12 And lastly, because of this somewhat unusual plan
13 structure and the liquidating trust, and so forth, I
14 haven't had a chance to really think through everything
15 thoroughly myself or discuss this with the debtors. But I
16 would just ask the Court to retain jurisdiction of over any
17 issues that we may have as to what will constitute a
18 disbursement for quarterly fee purposes as we go forward
19 and these transactions come to fruition.

20 THE COURT: Okay. I'm certain they really want
21 to move it along quickly so they're not continuing to pay
22 trustee fees.

23 MR. MCKAY: Oh, I'm sure they will. And I think
24 they can probably get a final decree entered and have the
25 liquidating trust exist as an independent entity going

1 forward. But I just want to make sure that if we have a
2 dispute, we will certainly do everything we can to work
3 things out.

4 THE COURT: Okay.

5 MR. McKAY: But we never know, so --

6 THE COURT: Right, I understand.

7 MR. McKAY: Thank you, Your Honor.

8 THE COURT: Mr. Patten.

9 It sounded like somebody was getting their money
10 out back there to contribute, I guess, to the fund.

11 MR. PATTEN: Your Honor, I'd call Ron Greenspan.

12 THE COURT: Okay. Mr. Greenspan, if you would
13 come forward to be sworn, please.

14 RONALD GREENSPAN, WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MR. PATTEN:

17 Q. Please state your name.

18 A. Ronald Greenspan.

19 Q. Mr. Greenspan, you're the CRO --

20 A. Yes.

21 Q. -- in this case?

22 A. I'm sorry. Yes.

23 Q. Are you familiar with the proposed Chapter 11 plan?

24 A. I am.

25 THE COURT: Mr. Patten, maybe just for the

1 record, disclose what "CRO" is.

2 Q. (By Mr. Patten) Could you briefly describe what is
3 meant by "CRO"?

4 A. It stands for "chief restructuring officer". And I've
5 been responsible for most of the negotiations and have been
6 involved in the development of the plan of reorganization.

7 Q. Have you acted as a CRO in any other cases?

8 A. Yes.

9 Q. How many?

10 A. As absolute formally a CRO, I mean a handful; and doing
11 those responsibilities as financial adviser, in very many.

12 Q. Is that what you -- that's the focus of your work,
13 right?

14 A. The sole focus of my work is debtor and creditor work
15 involved in major bankruptcies.

16 THE COURT: That's sufficient. I just wanted to
17 make sure that "CRO", people knew what that meant in the
18 record.

19 MR. PATTEN: Okay.

20 Q. (By Mr. Patten) Mr. Greenspan, have you helped
21 formulate the terms of the proposed plan?

22 A. Yes, I did.

23 Q. And you're familiar with the Credit Suisse/CrossHarbor
24 settlement that Mr. Levy and Mr. Green described earlier?

25 A. I am.

1 Q. Were you involved in the negotiation of terms of that
2 settlement?

3 A. Yes.

4 Q. Does the settlement, if incorporated into the plan, put
5 into effect the Court's order issued about a week ago on
6 subordinating a Credit Suisse loan to the claims of the
7 general unsecured creditors?

8 A. I believe it has that economic effect.

9 Q. Will the plan discriminate between any non-insider
10 general unsecured creditors?

11 A. I do not believe so.

12 Q. Will the plan, as modified by the settlement, provide
13 for full payment of the general unsecured claims,
14 non-insider general unsecured claims?

15 A. It's certainly our estimate and expectation that it
16 does.

17 Q. Will the plan, as modified by the settlement, pay the
18 claims in the correct order of priority, given -- taking
19 into consideration the Court's order issued in the
20 adversary a week ago subordinating the Credit Suisse
21 claims?

22 A. Yes.

23 Q. The first claims to be paid will be the administrative?

24 A. Correct.

25 Q. Then the priority unsecured?

1 A. Correct.

2 Q. Then the general unsecured?

3 A. Yes.

4 Q. And then the remaining funds will be distributed pro
5 rata, pari passu between the deficiency claim of Credit
6 Suisse and whatever the remaining unpaid unsecured claims
7 are, including the insider unsecured claims?

8 A. Yes.

9 Q. Will any of the -- you're knowledgeable of the current
10 officers and directors, persons in control of the debtor
11 entities?

12 A. Yes.

13 Q. Is that Edra Blixseth?

14 A. Yes.

15 Q. Will she remain in control of the reorganized debtor?

16 A. No.

17 Q. Do you know who will be in control of the reorganized
18 debtors?

19 A. It will be a fund affiliated with CrossHarbor Capital.

20 Q. Okay. And to your knowledge, is that fund currently in
21 control of the debtors?

22 A. No.

23 Q. Has the liquidating trustee been identified?

24 A. I don't believe so.

25 Q. Do you know if it's anticipated that Edra Blixseth

1 would be the liquidating trustee?

2 A. I do not think she will be.

3 Q. Okay. And are you aware of who will direct the trustee
4 in the administration of the liquidating trusts?

5 A. Yes.

6 Q. Who was that?

7 A. There's a board constituted, I believe, of seven
8 members initially, four of which are -- I'm sorry -- yeah,
9 four of which are appointed by the prepetition secured
10 creditors, two by the UCC, and one by the Class B; with
11 most decisions requiring a majority vote, but some
12 decisions requiring unanimity, particularly the choice of
13 counsel.

14 Q. You were present at the auction that was conducted last
15 week in Billings?

16 A. Yes.

17 Q. And you're familiar with the various bids that were
18 made at the auction?

19 A. Yes.

20 Q. Is the settlement price -- terms of the settlement, how
21 does that compare with where the bids were at the time the
22 auction was recessed?

23 A. At the point the auction was recessed, the then open
24 bid was \$150 million composed of approximately 40 million
25 of cash and the balance credit bid. The settlement

1 provide -- the settlement is nominally at 100 -- I want to
2 say \$115 million; yeah, \$115 million, but provides
3 meaningfully more cash to satisfy various unsecured
4 creditors and to fund the litigation trust.

5 Q. Do you recall how the CrossHarbor bid was ratcheted up
6 during the course of the auction in relationship with the
7 Credit Suisse bid?

8 A. Yes.

9 Q. Was there an amount allocated to the CrossHarbor bid
10 taking into consideration the working capital that Credit
11 Suisse had -- or, excuse me, CrossHarbor had committed to
12 invest in the reorganized debtor?

13 A. Yes. I believe there was a \$10 million increment
14 associated -- a benefit given to the CrossHarbor bid on
15 account of the more favorable and secure terms.

16 Q. Okay. Had you had an opportunity during or before the
17 auction process to review the Credit Suisse business plan?

18 A. Yes.

19 Q. And did you have any concerns regarding --

20 THE COURT: Mr. Chehi?

21 MR. CHEHI: I'm going to object to the line of
22 questioning, unless there's a proffer of some sort to
23 justify why we would be exploring at this stage of this
24 confirmation hearing the valuations, and the like, in
25 respect of the auction process. Because we would certainly

1 take issue with the debtors' views of values and relative
2 values and merits of the respective bids that were made by
3 the parties during the auction which was truncated and not
4 concluded. And with that, I -- you know, again, there may
5 be some reason to get into this; but, otherwise, we're
6 going to object to any proposed findings that would be
7 determinative of the values of our bids, at least.

8 THE COURT: Okay.

9 MR. PATTEN: What I'm trying to establish, Your
10 Honor, is: We do have an objection from Mr. Blixseth that
11 incorporated all of the Credit Suisse objections. And so I
12 think that it's necessary to have a record as to the
13 adequacy of the terms of the Credit Suisse/CrossHarbor
14 settlement to reflect what I believe is, is the --
15 essentially, the stage of the auction when it was
16 terminated.

17 THE COURT: Well, is there any disagreement that,
18 in fact, the settlement is, in fact, more value than where
19 we were at at the time the auction was recessed?

20 MR. PATTEN: Not, not by the debtors, Your Honor,
21 but Mr. Blixseth may argue that it isn't. And I need to
22 have a record for that eventuality.

23 THE COURT: Mr. Chehi.

24 MR. CHEHI: I think Mr. Greenspan testified just
25 a few minutes ago that the consideration available to

1 creditors directly through the settlement process and the
2 consideration available through the settlement to fund the
3 liquidating trust for purposes of generating additional
4 value for creditors, under the settlement exceeded those
5 respective values that were available under any of the
6 proposals at the auction. And I think that would satisfy
7 the showing that the settled outcomes and values are
8 superior to whatever might have emerged on a preliminary
9 basis at the auction.

10 THE COURT: Okay.

11 MR. PATTEN: What I'd like in the record, Your
12 Honor, is Mr. Greenspan's -- I would like evidence that the
13 terms of the settlement reflect a fair value for the
14 property being conveyed to the reorganized debtor.

15 THE COURT: Well, you may be able to just ask him
16 that.

17 MR. PATTEN: Okay.

18 THE COURT: I mean and maybe he already stated
19 that.

20 MR. CHEHI: And, again, the clarification, it's
21 the terms of the settlement are providing for and
22 incorporating and adjusting the value that's being paid by
23 the CrossHarbor acquisition entity for the equity of the
24 reorganized company and not for the property of the
25 debtors' estates or the assets.

1 MR. PATTEN: Okay.

2 THE COURT: I mean, also, I guess, you know, to
3 add to the record, having been involved somewhat, I guess,
4 as a facilitator for a period of time in the matter, it
5 would appear, based upon what has been related to me this
6 morning as to the conditions and the material contained in
7 the term sheet that, in fact, the settlement is of greater
8 value to the estate than where the bids were at the time, I
9 guess, I recessed the auction to allow parties to go back
10 to the hotel to continue, if they wished to do so.

11 Q. (By Mr. Patten) Mr. Greenspan, did you just hear the
12 Court's comments on the fair value?

13 A. I did.

14 Q. Do you concur with that?

15 A. I concur completely.

16 Q. Thank you.

17 THE COURT: Would it matter?

18 MR. PATTEN: I need a record, Your Honor.

19 THE COURT: I know.

20 MR. PATTEN: Maybe.

21 Q. (By Mr. Patten) Mr. Greenspan, are you familiar with
22 the CrossHarbor business plan?

23 A. Yes.

24 Q. And are you familiar with the projections of revenue
25 and expense?

1 A. Yes.

2 Q. And in the course of your involvement as chief
3 restructuring officer, have you become familiar with the
4 historic revenue and expense of the various Yellowstone
5 Club entities?

6 A. Yes.

7 MR. PATTEN: Your Honor, may I approach the
8 witness?

9 THE COURT: You may.

10 THE WITNESS: Thank you.

11 Q. (By Mr. Patten) Mr. Greenspan, I've handed you what's
12 been marked as Exhibits A, B, and C. Do you recognize
13 those documents?

14 A. Yes, yes.

15 Q. Can you tell the Court what Exhibit A is?

16 A. Oh, after the late nights, I can't read small print
17 anymore, but the Exhibit A is the liquidation analysis that
18 was attached to the disclosure statement.

19 Q. And was Exhibit A prepared under your supervision and
20 direction?

21 A. Yes, it was.

22 Q. Was it prepared based on information that you obtained
23 in the course of your acting as chief restructuring
24 officer?

25 A. Yes.

1 Q. And is it prepared in accordance with your knowledge of
2 bankruptcy law and priorities, and such?

3 A. Yes.

4 MR. PATTEN: Your Honor, I'd move the admission
5 of Exhibit A.

6 THE COURT: Any objection? Exhibit A is
7 admitted.

8 EXHIBIT A ADMITTED INTO EVIDENCE
9 BY MR. PATTEN:

10 Q. Can you describe to the Court what Exhibit B is?

11 A. Exhibit B also is attached to the disclosure statement,
12 and it is the summary analysis of the distribution of cash
13 payment as of the effective date pursuant to the filed
14 disclosure statement and plan.

15 Q. And was Exhibit B also prepared under your supervision
16 and instruction?

17 A. Yes.

18 Q. And is it based consistent with your knowledge of the
19 then proposed distribution of cash as of the effective
20 date?

21 A. I'm sorry, yes.

22 Q. The proposed distribution has been modified under the
23 settlement reached between Credit Suisse and CrossHarbor,
24 correct?

25 A. That is correct, as well as more cash available at

1 closing than indicated on this exhibit.

2 Q. Okay.

3 MR. PATTEN: I'd move the admission of Exhibit B.

4 THE COURT: Any objection? Exhibit B is
5 admitted.

6 EXHIBIT B ADMITTED INTO EVIDENCE

7 BY MR. PATTEN:

8 Q. And then, finally, can you identify what Exhibit C is?

9 A. Exhibit C is the pro forma projections of future
10 operations and cash flows as attached to the disclosure
11 statement.

12 Q. Was Exhibit C prepared by CrossHarbor?

13 A. Yes. For clarification, we have two sets of
14 projections that were attached to the disclosure statement:
15 One showed, for lack of better description, the CrossHarbor
16 anticipated business operations; and a second one, which
17 was an alternative debtor projections.

18 This is, in fact, the CrossHarbor ones that we had
19 reviewed.

20 Q. Okay. And you're familiar with the projections set out
21 in the CrossHarbor --

22 A. Yes, I am.

23 Q. And does Exhibit C reflect the CrossHarbor business
24 plan or at least the financial parts of the business plan?

25 A. As I understand it, yes.

1 Q. Is Exhibit C the business plan, as you know it, going
2 forward from the effective date?

3 A. That is my understanding.

4 MR. PATTEN: Your Honor, I'd move the admission
5 of Exhibit C.

6 THE COURT: Any objection? Exhibit C is
7 admitted.

8 EXHIBIT C ADMITTED INTO EVIDENCE
9 BY MR. PATTEN:

10 Q. Look, if you would, Mr. Greenspan, at Exhibit B.

11 A. Yes, sir.

12 Q. Taking into account the additional funds that will be
13 provided, cash funds that will be provided under the
14 CrossHarbor/Credit Suisse settlement, are you satisfied
15 that there will be sufficient monies available to pay the
16 administrative expenses of the estate?

17 A. Yes.

18 Q. And have you obtained information from the various
19 professionals as to the amount of the administrative
20 expenses of the estate?

21 A. Yes.

22 Q. Will there be sufficient funds under the settlement to
23 pay the debtor-in-possession loan?

24 A. Yes.

25 Q. Will there be sufficient funds available under the

1 settlement to pay the allowed priority claims?

2 A. Yes.

3 Q. And do you have an opinion as to whether the funds
4 available will be sufficient to pay all of the general
5 unsecured non-insider claims?

6 A. I believe they should be.

7 Q. So the funds under the settlement which were
8 incorporated into the plan will pay all the costs of
9 administration, all the priority claims, and will satisfy
10 all of the general unsecured nonpriority claims?

11 A. They should.

12 Q. And do you have any anticipation that there will be
13 funds above and beyond that that would be applied to the
14 insider unsecured claims and the Credit Suisse deficiency
15 claim?

16 A. There certainly should be.

17 Q. Do you have an opinion as to whether the plan, as
18 modified by the settlement, reflects the best outcome for
19 the general unsecured creditors in this case?

20 A. I think it definitely does.

21 Q. Do you have an opinion about whether it reflects the
22 best outcome for the non -- or, excuse me, for the insider
23 general unsecured claims in this case?

24 A. I mean I believe so.

25 Q. Looking at Exhibit C, are you satisfied that the

1 projections set out in Exhibit C are achievable in today's
2 economic climate?

3 A. I certainly think they're reasonable and probably
4 achievable. And given the contingency, the availability,
5 the capital commitment availability, I don't think there is
6 a significant probability that they won't be achieved.

7 Q. And have you done -- have you been provided any
8 information demonstrating or verifying the funds available,
9 the money available to CrossHarbor to invest this working
10 capital?

11 A. Yes, I've seen the auditor's reports.

12 Q. And does Credit Suisse have -- excuse me, does
13 CrossHarbor have the funds available to perform under this
14 plan, including the injection of the working capital that's
15 contemplated under the plan?

16 A. It certainly appears so.

17 Q. Do you have an opinion about whether or not a
18 liquidation or further restructure is going to be necessary
19 in this case?

20 A. I do.

21 Q. What's that opinion?

22 A. That it is not likely.

23 Q. Under the settlement, will the nonprepetition lenders
24 retain their liens under the plan or be paid the value of
25 their liens --

1 A. I --

2 Q. -- under the plan?

3 A. I'm sorry. I believe so.

4 Q. Are you familiar with the exculpation clause in the
5 plan?

6 A. Yes.

7 Q. Have any of the professionals in this case been
8 threatened during the course of these proceedings?

9 A. Well, people might have different opinions on that. I
10 think so.

11 Q. Is that a basis or purpose for the exculpation clause?

12 A. I think that's one of them.

13 MR. PATTEN: Thank you. That's all I have.

14 THE COURT: Mr. Patten?

15 MR. PATTEN: That's all I have.

16 THE COURT: Mr. Guthals.

17 MR. GUTHALS: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. GUTHALS:

20 Q. Mr. Greenspan, I'm Joel Guthals. You and I have met
21 before, right?

22 A. We have.

23 Q. Good morning. I represent Mr. Blixseth and also Desert
24 Ranch, LLLP.

25 On your Exhibit B that you were looking at just a few

1 minutes ago, there is an amount at the bottom of that
2 document that sets forth the claim of Prim; is that right?

3 A. That is correct.

4 Q. What's the amount of that claim?

5 A. What is shown on Exhibit B is \$10,095,123.

6 Q. Okay. Are you familiar with the Prim claim?

7 A. Yes.

8 Q. Okay. And you're aware that Prim filed an amended
9 proof of claim --

10 A. Yes -- oh, I'm sorry.

11 Q. -- in which they stated a secured claim in the amount
12 of \$4 million and an unsecured claim in the amount of
13 \$6,095,123.29. Are you aware of that?

14 A. I'm aware of the amended claim with that type of
15 breakdown between secured and unsecured. I don't, sitting
16 here, recollect the exact dollar amounts, but it's in the
17 range of what you said.

18 MR. GUTHALS: Your Honor, for the record, that is
19 Claim No. 224; and the amendment is 224, too, I believe.

20 THE COURT: Thank you.

21 Q. (By Mr. Guthals) Mr. Greenspan, I'm looking at the
22 claim, and it's dated March 18, 2009. Do you disagree with
23 that?

24 A. Well, I mean I -- do I disagree that you're looking at
25 it? No, I don't know. What I just told you was that I --

1 Q. You disagree that the amended claim was filed in
2 March 18, 2009.

3 A. I mean I know it was filed after the disclosure
4 statement, after the date of the schedule. I don't
5 recollect sitting here the exact date.

6 Q. Okay. And as chief restructuring officer of the
7 debtor, has the debtor done anything to object to this
8 claim?

9 A. My recollection sitting here is we have not filed an
10 objection yet.

11 Q. Okay. And you're a bankruptcy expert, right? Is that
12 correct, you're a bankruptcy expert?

13 A. I think so.

14 Q. Yes. And so you're aware that if a proof of claim is
15 filed and no objection is filed against it, then that claim
16 is deemed allowed; is that right?

17 A. Well, if no objection is ultimately filed, that's
18 correct.

19 Q. Well, as we are here today at the confirmation hearing,
20 we have a claim for which no objection has been filed,
21 right?

22 A. That's my recollection.

23 Q. Okay. And so as we are here at the confirmation
24 hearing this morning, this claim, which is \$4 million
25 secured and \$6 million unsecured, is deemed allowed, right?

1 A. Well, I'll leave that to the lawyers and judge to
2 determine the legal effect.

3 Q. Okay. And what the plan seeks to do upon the
4 confirmation is to have a satisfaction of the claim that
5 Prim exercises its foreclosure remedies, its full
6 satisfaction for the claim, right?

7 A. At the time that the disclosure statement was filed,
8 Prim's claim was fully a secured claim. It was prior to
9 the amendment. So I think the treatment you describe is,
10 in fact, what's set forth in the disclosure statement and
11 plan.

12 Q. Well, it's set forth in the second amended plan, is it
13 not?

14 A. I believe so, which I believe was early March.

15 Q. And, in fact, the plan -- I'm reading 1.100 of the
16 second amended plan, which is the plan that's before the
17 Court this morning. It says that (quoted as recorded):

18 "The Prim claims, meaning the claims of Prim
19 Vintage Development, LP, against YB and YC, which claims
20 are alleged secured by the 160-acre tract of land located
21 within the Yellowstone Club and evidenced by a proof of
22 claim dated January 22, 2009, as amended by a proof of
23 claim dated March 18, 2009."

24 Will you agree with that?

25 A. I believe so.

1 Q. Okay. And then if we go to page -- I think this is
2 page 23 of the second amended plan, this is the table that
3 shows --

4 THE COURT: Mr. Patten.

5 MR. PATTEN: Your Honor, may I approach the
6 witness and give him a copy of the plan so he can read
7 along with the --

8 THE COURT: Certainly. You may approach.

9 THE WITNESS: Mr. Guthals, I'm sorry, can you
10 please repeat which section you're reading from?

11 Q. (By Mr. Guthals) Yes. I think, Mr. Greenspan, it's on
12 page 23 of the plan that sets the Court's docket number on
13 it. This is the table that summarizes how the claims are
14 going to be treated.

15 A. Are you looking at the first mended or the second
16 amended?

17 Q. Second amended plan, sir.

18 A. Okay.

19 Q. This is the table that is in front of the section that
20 begins Article III.

21 A. Okay, I have that. That's on page 15 of the version I
22 have, but it is the --

23 Q. Okay.

24 A. -- table that lists each of the classes and the claim
25 and the interest and the status.

1 Q. Okay. And then on that table, you'll see: Class 11-B
2 Prim secured claims.

3 Right?

4 A. Yes.

5 Q. Do you see that? And the status is that it's
6 unimpaired, right?

7 A. Correct.

8 Q. And that it's not entitled to vote, right?

9 A. Correct.

10 Q. Okay. And then if you will turn a few pages into the
11 second amended Chapter 11 plan, you'll come to
12 Section 3.11.

13 A. Yes.

14 Q. And that takes care of - (inaudible) - Class 11, the
15 Prim claim, right?

16 A. Actually, I think that's probably 3.1.1. Let me -- or,
17 I'm sorry, 3.11.

18 Q. Yeah, 3.11. And that entire paragraph, then, covers
19 the Prim claim, right?

20 A. That is correct.

21 Q. And what this provides is that (quoted as recorded):

22 "The holder of the allowed Prim secured claim
23 shall be entitled to commence any collection action
24 pursuant to Montana law. And that's its sole and exclusive
25 remedy."

1 Is that right?

2 A. Correct.

3 Q. Okay. And then it further says that (quoted as
4 recorded):

5 "Provided, however, that in no event shall the
6 reorganized debtor be obligated in any way on account of
7 any Prim claim."

8 That's what it says, right?

9 A. I'm sorry, where are you reading from?

10 Q. The same paragraph, just down a few lines.

11 A. Okay, let me get caught up with you.

12 Q. Okay. I'm at 3.11.3, treatment.

13 A. Yes.

14 Q. Okay. So I just want to make sure that we have a good
15 record of this, that --

16 MR. PATTEN: Your Honor --

17 MR. GUTHALS: I'm sorry, did somebody say
18 something?

19 THE COURT: I was looking around myself,
20 Mr. Guthals. I didn't see who said something.

21 Mr. Patten?

22 MR. PATTEN: We were going to start an objection,
23 but we were premature, so --

24 THE COURT: Oh, okay. Please proceed,
25 Mr. Guthals.

1 MR. GUTHALS: Thank you, Your Honor.

2 Q. (By Mr. Guthals) And the plan provides that (quoted as
3 recorded):

4 "The sole exclusive remedy will be the
5 foreclosure action, and that in no event shall the
6 reorganized debtor shall be obligated in any way on account
7 of any Prim claim."

8 Is that right?

9 A. Correct.

10 Q. Okay. And then it further goes on to say that (quoted
11 as recorded):

12 "On the effective date, the reorganized debtors
13 will receive an option to purchase the Prim collateral from
14 the owner of the Prim claim for \$1."

15 Is that what it says?

16 A. Yes.

17 Q. And what happened, Mr. Greenspan -- we've seen what
18 happened to the Prim secured claim, but what happened to
19 the Prim unsecured claim of \$6 million?

20 MR. PATTEN: Your Honor.

21 THE COURT: Mr. Patten.

22 MR. PATTEN: I want to make an objection. It
23 calls for a legal conclusion. Whether or not Mr. Prim is
24 entitled to a deficiency is a legal issue. Your Honor, we
25 have a seller-financed mortgage. And under Montana law,

1 purchase money mortgages are not entitled to deficiencies.

2 MR. GUTHALS: Your Honor, I'm just asking the
3 witness to explain what the plan provides.

4 THE COURT: Mr. Patten.

5 MR. PATTEN: Well, if that's the case, the plan
6 speaks for itself.

7 THE COURT: Sustained.

8 MR. GUTHALS: I have a few more questions, Your
9 Honor, if I may just have a moment here.

10 THE COURT: You may.

11 MR. GUTHALS: Thank you.

12 Q. (By Mr. Guthals) Mr. Greenspan, it's my understanding
13 that in the settlement agreement that has been reached
14 between Credit Suisse and CrossHarbor, there will continue
15 to be nondebtor releases; is that right?

16 A. Well, the settlement agreement involves additional
17 parties than those two you just mentioned, but it does
18 include nondebtor releases.

19 Q. Okay. And none of us have seen these terms.
20 Apparently, they're being worked out right now; is that
21 correct? They're being hammered out in a separate room?

22 A. No. I believe those terms have been finalized and are
23 part of the term sheet that was executed. What is being
24 worked on right now is simply the details of the
25 post-confirmation credit agreement governing the

1 \$80 million note.

2 Q. Well, then you know what, what parties are covered by
3 these releases; is that correct?

4 A. I've certainly read it, yes.

5 Q. So can you tell me: Is Edra Blixseth covered by the
6 releases?

7 A. My recollection --

8 MR. PATTEN: Your Honor, may I approach the
9 witness and provide him with a copy of the term sheet?

10 THE COURT: You may.

11 THE WITNESS: Thank you. Mr. Guthals, I'm sorry,
12 the question was?

13 Q. (By Mr. Guthals) I'm asking you, sir, if you can tell
14 us who was covered by these releases.

15 A. Well, first, it starts with the releases that are
16 provided in the plan, the second amended plan. So it
17 starts with those. In addition, the pre -- excuse me, the
18 prepetition agent and the prepetition lenders are added as
19 additional exculpated parties, as defined in the plan. And
20 then in addition, CrossHarbor, CrossHarbor Institutional
21 Partners, CIP Lending, CrossHarbor Capital Partners, LLC,
22 and their affiliates with interest in the Yellowstone Club;
23 in addition, the UCC and the members of the UCC, solely in
24 their capacities as members thereof, the debtors, the
25 reorganized debtors, the prepetition agent and prepetition

1 lenders with respect to releases dealing with the
2 Yellowstone Club or the debtors.

3 And then it further provides that the releases do not
4 apply to any willful misconduct by any individual person
5 with the fiduciary duties to the UCC, the debtors, or the
6 debtors' estates.

7 Q. Okay. Sir, does the second amended plan still call for
8 a substantive consolidation?

9 A. It provides for a substantive consolidation only
10 amongst two of the - (inaudible) - been late; two of, I
11 want to say, four debtors. But there's two entities that
12 are substantively consolidated. But that's not changed.

13 MR. GUTHALS: Okay. That's all the questions I
14 have. Thank you.

15 THE COURT: Thank you, Mr. Guthals.

16 Mr. Patten?

17 MR. PATTEN: No redirect.

18 THE COURT: Mr. Moore.

19 MR. MOORE: Thank you.

20 CROSS-EXAMINATION

21 BY MR. MOORE:

22 Q. Mr. Greenspan, you're familiar with the terms of the
23 original plan and the treatment of creditors who are
24 impaired and unimpaired under the plan?

25 A. Yes.

1 Q. Okay. And you're also familiar with the settlement
2 agreement and how it affects the various classes of claims?

3 A. Yes.

4 Q. Does the settlement agreement adversely impact any of
5 those classes of claims other than those who have agreed to
6 the treatment provided under the settlement agreement?

7 A. I do not believe that it adversely affects any such
8 class.

9 Q. Okay. And with respect to the -- excuse me, the
10 Class 11 treatment in 3.11 --

11 A. You'll have to refresh my recollection of which is
12 Class 11.

13 Q. It's page 21.

14 A. Oh, the Prim secured claims.

15 Q. Yes.

16 A. Go ahead.

17 Q. Is it fair to say that section addresses the treatment
18 of the allowed secured claim of Prim?

19 A. Yes.

20 Q. Is there a separate section of the plan that treats any
21 allowed unsecured claims that the Court may deem to be
22 allowed unsecured claims?

23 A. Yes. If and to the extent there is an allowed
24 unsecured claim, it would be a Class 4 general unsecured
25 claim.

1 Q. So if the Court were to disagree with the debtors'
2 theory as to Montana law and Prim had an allowed unsecured
3 claim, where would that be treated under the plan?

4 A. Well, I think, given the objections that are likely to
5 be lodged against that claim, I think it would take more
6 than just a reversal on that one theory. But if Prim were
7 to have -- which it's now, of course, been transferred to a
8 Tim Blixseth-owned entity. But if that entity were, in
9 fact, to have an allowed unsecured claim, it would be
10 treated as a Class 4 claim.

11 Q. And it would be getting the same treatment and
12 distribution as any other unsecured claim?

13 A. Yes.

14 MR. MOORE: Thank you. That's it.

15 THE COURT: Mr. Chehi.

16 Mr. Whitmore, you're right after Mr. Chehi.

17 CROSS-EXAMINATION

18 BY MR. CHEHI:

19 Q. Mr. Greenspan, you're familiar with the treatment of
20 the prepetition lender claims under the plan as it would be
21 modified to conform with the settlement agreement?

22 A. Yes.

23 Q. And does that treatment, in effect, provide that the,
24 that the claims of various administrative creditors and
25 Class 4 general unsecured creditors will be paid ahead of

1 the prepetition lender claims?

2 A. I'm sorry, Mr. Chehi, I lost the question.

3 Q. The question is: Does the -- will the plan, as
4 modified by the settlement, provide that Class 4 general
5 unsecured creditors will be paid in advance of the
6 prepetition secured creditors with respect to funds that
7 are made available under the plan?

8 A. Yes.

9 Q. And you recall that the prepetition lender claims and
10 liens were subject to and are subject to some pending
11 litigation in this Court in an adversary proceeding?

12 A. Yes.

13 Q. And is it your understanding that that litigation is
14 complex and difficult and, in some senses, create some
15 uncertainty as to ultimate outcome?

16 A. Yes.

17 Q. And do you believe that the settlement of the treatment
18 of the prepetition lender claims and liens under the
19 settlement term sheet, which would be incorporated in the
20 modified plan, is a fair and reasonable settlement under
21 all the circumstances?

22 A. Yes.

23 Q. And do you believe that it's in the best interest of
24 creditors generally in this case that that settlement be
25 incorporated in the plan as modified?

1 A. Yes.

2 MR. CHEHI: No further questions, Your Honor.

3 THE COURT: Mr. Whitmore.

4 MR. WHITMORE: Your Honor, Clark Whitmore. The
5 Class B creditors do not support the Prim objection. I'm
6 just here to, if I could, just make a record on a couple
7 minor points relating to our continuing concerns.

8 CROSS-EXAMINATION

9 BY MR. WHITMORE:

10 Q. So, Mr. Greenspan, has the final version of the trust
11 agreement been prepared yet and circulated?

12 A. I believe there was a form that was attached to the
13 disclosure statement. To the best of my knowledge, there's
14 been no modifications actually negotiated or agreed to.
15 Subsequently, I believe there will probably be some effort
16 to make some procedural operational improvements to that,
17 but that has not been a priority up until now. But I'm
18 sure it will be done before the trust is effective.

19 Q. The trust agreement provided for a trust advisory
20 board; isn't that correct?

21 A. That is correct.

22 Q. And the initial version filed with the disclosure
23 statement in April provided for the ad hoc "B" members
24 group to have input on the selection of two members of the
25 board ; isn't that right?

1 A. I believe that is correct.

2 Q. And then there was three members from the Class 4
3 claims that would also be on the board; isn't that right?

4 A. That is correct.

5 Q. And that's -- that would change the result of the
6 settlement?

7 A. Correct.

8 Q. And so the Class B holders would have an opportunity to
9 get one out of seven members on the board; isn't that
10 correct?

11 A. Well, the Class B holders were going to be a minority
12 before and they will continue to be a minority, but the
13 current settlement agreement provides for one member.

14 Q. Yes, you're right. They're a minority in both
15 situations, but they're a different minority; isn't that
16 correct?

17 A. They're still shy of 51 votes, but that's correct.

18 Q. And there's going to be a number of other changes to
19 the trust agreement, right?

20 A. Well, I would anticipate -- I mean you've pointed up a
21 number of items that it would be beneficial to clean up and
22 change, but I would anticipate there would be changes, but
23 many of them at your suggestion.

24 Q. Yes. And has a trustee been selected yet?

25 A. Not that I know of.

1 Q. And this calls for the board to select the trustee;
2 isn't that right?

3 A. I believe so.

4 Q. And is it the debtors' intention to file a revised plan
5 and then to go through at least a resolicitation with the
6 prepetition lenders and then have a follow-up hearing, or
7 are we here to -- is it your understanding that today is
8 the actual confirmation of some sort of modified plan?

9 A. Well, again, I will defer to the lawyers. I would like
10 to believe that we will be able to achieve a confirmation,
11 subject to certain post-hearing events such as a revote by
12 the prepetition secured creditors. But I'll defer to the
13 judge and counsel on the actual effect of this and the
14 mechanics.

15 Q. And the revised -- the modified plan will add the
16 prepetition lenders to the parties who are receiving an
17 exculpation and sort of a release of claims under the plan;
18 isn't that right?

19 A. That is correct.

20 MR. CHEHI: I'll object to the characterization
21 as a "release". It's an exculpation - (inaudible) -
22 limitation of liability for defined purposes.

23 THE COURT: Sustained.

24 Q. (By Mr. Whitmore) Is it your understanding,
25 Mr. Greenspan, that the exculpation provided here is

1 greater than the exculpation contemplated by the bankruptcy
2 code for participants in the plan process?

3 A. I mean I stopped practicing law 26 years ago, so I'll
4 leave that to the lawyers and the judge to determine.

5 Q. All right. Could you turn to Section 8.4 of the second
6 amended claim?

7 A. Yes, sir.

8 Q. I won't ask you to read what it says, but do you have
9 an understanding as to the intended scope of what's being
10 provided for here?

11 A. Do I have an understanding?

12 Q. Yes.

13 A. I believe so.

14 Q. And what is your understanding of the protections that
15 would be afforded to the parties who were included within
16 this?

17 A. Well, I mean again, I would think the best thing to do
18 is to read what the language says. And under 8.4, about
19 halfway down, it says (quoted as recorded):

20 "These parties, the exculpated parties, they
21 shall not have or incur any liability to any person for any
22 act or omission in connection with, relating to, or arising
23 out of the Chapter 11 cases, the formulation negotiation,
24 implementation, and confirmation -- or consummation of this
25 plan, the disclosure statement" - I'm skipping some

1 language - "entered into during the Chapter 11 cases, or
2 otherwise created in connection with this plan."

3 And then it goes on to say it doesn't include willful
4 misconduct or gross negligence. And so what it was
5 intended, as that states, is that it would be an
6 exculpation for activities that occurred post-filing and up
7 until confirmation and excluding willful misconduct or
8 gross negligence.

9 Q. Right. So it's not intended to include - (inaudible) -
10 release of any claims for any misconduct that occurred
11 prior to the bankruptcy case; is that right?

12 A. 8.4 was not intended to, correct.

13 MR. WHITMORE: No further questions, Your Honor.

14 THE COURT: Thank you. Mr. Patten.

15 MR. PATTEN: One question that Mr. Moore asked
16 raised one with me.

17 REDIRECT EXAMINATION

18 BY MR. PATTEN:

19 Q. Mr. Greenspan, you understand the duties and functions
20 of the liquidating trust?

21 A. I believe so.

22 Q. Does that include objecting to claims?

23 A. Yes, it does.

24 Q. So if there was an objection to the Desert
25 Ranch/Blixseth/Prim claim, that would be done by the

1 liquidating trust?

2 A. Well, either by the debtor in the next five - six weeks
3 or the liquidating trust after its creation.

4 MR. PATTEN: Thank you.

5 THE COURT: Mr. Greenspan, you may step down.

6 THE WITNESS: Your Honor, may I just make one
7 comment?

8 THE COURT: I'll allow you to make a comment.

9 THE WITNESS: Thank you.

10 THE COURT: What comment would you like to make?

11 THE WITNESS: I just wanted to say: Everybody on
12 all sides have put in, you know, tremendous hours
13 throughout this case. But, you know, after we left here
14 Friday the parties did relatively quickly reach an
15 agreement and then there's just been absolutely yeoman's
16 work done by Skadden, by Credit Suisse, by the Bullivant
17 firm, by Mr. Patten, Mr. Beckett, and the members. And I
18 think throughout particularly the last three to four days,
19 and, quite frankly, through most of this procedure, there's
20 been a high degree of professionalism and certainly a great
21 deal of effort to get this to where it is today.

22 And then, also, I'd like to -- and, also, there's
23 been some commentary through this case about potentially
24 improper relationships. And I'll just tell you that in my
25 time being here, I haven't seen any of that. And I think a

1 number of the parties, quite frankly, to some of their own
2 personal detriment, have acted in the best interest of this
3 estate.

4 THE COURT: Thank you, Mr. Greenspan.

5 THE WITNESS: Thank you.

6 THE COURT: Mr. Patten.

7 MR. PATTEN: We call Brad Foster.

8 THE COURT: Mr. Foster, if you would come
9 forward, please, to be sworn.

10 MR. GREENSPAN: And I forgot to include
11 Mr. Green, who's probably the one who hasn't gotten any
12 sleep in the last 72 hours, in that list.

13 THE COURT: I would acknowledge that. While
14 you're stepping down and we're making room for Mr. Foster,
15 I echo Mr. Greenspan's thoughts. Having spent quite a bit
16 of time with, well, many of the parties, certainly probably
17 all the attorneys, some that are here and some that aren't,
18 I've been very impressed with, with the professionalism
19 overall and the manner in which the parties have sought to
20 reach resolution in this case, which probably from early --
21 well, from about Thanksgiving on, I felt was going to have
22 to happen if there was going to be any success in this
23 case. It took awhile to get there, but there was that
24 ultimate success, it appears. Although, I guess there's
25 been no ruling yet on the settlement agreement itself

1 because of the taking of testimony, but I do commend all
2 the attorneys on the very professional work that they've
3 done in this case.

4 Mr. Foster, you can come forward to be sworn.

5 CHARLES BRADLEY FOSTER, WITNESS, SWORN

6 BY MR. PATTEN:

7 Q. State your name, please.

8 A. Charles Bradley Foster.

9 Q. And, Mr. Foster, you work for FTI?

10 A. I do. I'm a managing director for FTI Consulting.

11 Q. Okay. And so you've been working with Mr. Greenspan --

12 A. I have.

13 Q. -- in his role as chief restructuring officer?

14 A. I have.

15 Q. In the course of your work, have you become familiar
16 with the membership agreements?

17 A. I have.

18 Q. In particular, are you familiar with the Robert Sumpter
19 membership agreement?

20 A. I have an understanding of the agreement, yes.

21 Q. Do you know the date of the agreement?

22 A. Not offhand.

23 Q. Do you know if it has any out-of-the-ordinary terms or
24 conditions?

25 A. I do understand that it is characterized as a

1 residential membership with some unusual aspects,
2 particularly the nonpayment of dues.

3 Q. Okay. Are you familiar with any other residential
4 memberships that provide that there's no payment of dues?

5 A. None that I'm aware of.

6 MR. PATTEN: Thank you. That's all I have.

7 THE COURT: Does anyone have questions for this
8 witness?

9 You may step down.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Mr. Patten.

12 MR. PATTEN: I call Sam Byrne.

13 THE COURT: Mr. Byrne, if you would come forward
14 to be sworn, please.

15 SAMUEL T. BYRNE, WITNESS, SWORN

16 DIRECT EXAMINATION

17 BY MR. PATTEN:

18 Q. Please state your name.

19 A. Samuel T. Byrne.

20 Q. Mr. Byrne, you're a principal at CrossHarbor?

21 A. That's correct.

22 Q. And are you familiar with the development of the
23 debtors' proposed Chapter 11 plan?

24 A. I am.

25 Q. Are you familiar with the terms in the plan?

1 A. I am.

2 Q. And, in particular, are you familiar with the so-called
3 "trade creditor fund" of the plan?

4 A. I am.

5 Q. Was that trade creditor fund included at the request or
6 insistence of CrossHarbor?

7 A. It was.

8 Q. What is the purpose of the trade creditor fund?

9 A. The trade creditor fund was critical to our
10 going-forward business plan if we were to be the acquiror
11 of the club in order to provide for payment to,
12 particularly to local and regional trades people and other
13 unsecured creditors that we would have to do business with
14 going forward in the community to ensure the success of the
15 club.

16 Q. So you would need to have a positive relationship with
17 them in order to continue to receive goods and services?

18 A. That's correct.

19 MR. GUTHALS: Objection. Your Honor, I object on
20 the grounds of leading.

21 THE COURT: Overruled.

22 Q. (By Mr. Patten) And, Mr. Byrne, was that determination
23 made for business purposes for CrossHarbor going forward?

24 A. It was made for business purposes for CrossHarbor going
25 forward should it be the acquiror of the club.

1 Q. Is that trade creditor fund, the net business purpose,
2 is that essential or important, I'll say, to the business
3 plan of CrossHarbor going forward?

4 A. We felt that it was very important to the business plan
5 going forward and to the success of that business plan.

6 Q. Was there a purpose in establishing the trade creditor
7 fund in order to gerrymander a vote of the trade class of
8 creditors?

9 A. Absolutely not.

10 MR. PATTEN: Thank you. That's all I have.

11 THE COURT: Anybody have questions of Mr. Byrne?

12 Mr. Byrne, you may step down.

13 THE WITNESS: Thank you.

14 MR. PATTEN: I call Steve Lehr.

15 THE COURT: If you could come forward, please, to
16 be sworn.

17 STEVEN LEHR, WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MR. PATTEN:

20 Q. Can you state your name?

21 A. Steven Lehr.

22 Q. Mr. Lehr, you've testified here before, right?

23 A. Yes.

24 Q. You're with CBRE?

25 A. I am.

1 Q. And are you the managing broker?

2 A. Managing director for the Land Service Group.

3 Q. Okay. And you've been responsible for the marketing of
4 the Yellowstone Club, I'll say, as part of this bankruptcy
5 plan?

6 A. Yes, I have.

7 Q. I know you've testified about this before, but would
8 you briefly describe to the Court what the marketing plan
9 consisted of? What steps were taken in order to expose
10 this property to the market?

11 A. Well, first of all, we did our own due diligence, went
12 to the club, visited it. We prepared an offering
13 memorandum, we sent out a brief summary of the offering
14 memorandum to roughly 18,000 potential investor funds, and
15 then we received confidentiality agreements based on the
16 interest of those people that were solicited. And we
17 received about 100 signed confidentiality agreements, and
18 then we proceeded to follow up with them throughout the
19 course.

20 Q. Is directing an offering memorandum to 18,000 people,
21 is that ordinary in your work?

22 A. Yeah; for my group, yes.

23 Q. Ordinary in terms of the number of people that are
24 contacted?

25 A. Yes.

1 Q. Does the process usually, then, involve also
2 the execution of confidentiality agreements?

3 A. Yes. And it varies per, per deal.

4 Q. Is it ordinary to have 100 confidentiality agreements
5 signed?

6 A. No. That was an extraordinarily high number.

7 Q. Did you say very high number?

8 A. Yes.

9 Q. Could you describe to the Court the level of, I'll say,
10 market response to the offering memorandum and, and --

11 A. We received a tremendous response to the offering
12 memorandum, to the teaser that we put out. We had one of
13 the potential bidders even go so far as to say that when he
14 was trying to find his funding, he had contacted someone in
15 Switzerland and that person in Switzerland had received our
16 offering. And so they were aware of the deal.

17 Q. How long have you been in the real-estate business?

18 A. Well, I practiced law for about 8 to 10 years and then
19 have been in the real-estate business for about 12.

20 Q. Is the nature of your work in the real-estate business
21 selling projects sort of, kind of like the Yellowstone Club
22 or of the same magnitude or complexity as the Yellowstone
23 Club?

24 A. We've not encountered anything this complex, or --

25 Q. But you sell undeveloped --

1 A. Yes.

2 Q. -- property?

3 A. Developed, undeveloped, and various stages of
4 entitlement.

5 Q. So sort of the general nature of the business is
6 something that CBRE does have experience with?

7 A. Absolutely.

8 Q. Do you have an opinion as to whether the time period
9 that the property was exposed to the market from when you
10 sent out your initial brief offering memorandum until the
11 auction last week, whether that is -- do you have an
12 opinion about whether that's an adequate time to expose the
13 property to the market?

14 A. Yes, I do.

15 Q. Are there any factors that you rely on significantly to
16 conclude that that's an appropriate marketing period?

17 A. I think, you know, in my prior testimony, I have stated
18 that in this environment where the market is literally
19 moving away from us and given how difficult it is to get
20 credit and funds into projects these days, that a shorter
21 marketing period might be beneficial if the market is
22 continuing to go down.

23 Q. And does that continue to be your opinion up through
24 today?

25 A. I believe the market is still moving away from us.

1 Q. Do you have any reservations about the adequacy of the
2 time that's been allowed for you to market this property?

3 A. No.

4 Q. You're familiar with the bids that were received --

5 A. I am.

6 Q. -- on this?

7 You were at the auction for several days?

8 A. I was.

9 Q. Do you have any reservations about the process that led
10 to the auction?

11 A. The process that led to the auction?

12 Q. Yeah.

13 A. No.

14 Q. Do you believe that the auction brought out the market
15 in terms of acquiring this property?

16 A. Well, I'm not as familiar with the exact bidding that
17 went back and forth toward the end, as I had to leave. But
18 based on what I've seen, I believe that there was an awful
19 lot of scrutiny put into taking a look at what the
20 different components would be. And I believe that the
21 price is a fair price, if that's what your question is.

22 Q. There were only two bidders, correct?

23 A. Yes.

24 Q. Do you have any concern that either the process or the
25 time period and the resulting two bidders, that there was a

1 defect someplace in either the time period or in the
2 process by which this was exposed to the market?

3 A. I guess my only commentary is that it took an awful
4 long time to get to this point, and I would have thought
5 that it could have been done a little quicker. But that
6 would be my general overall comment.

7 Q. As a broker, are you satisfied with the result, at
8 least as much as you know it, from the auction?

9 A. Yeah, I am.

10 MR. PATTEN: Thank you. That's all I have.

11 THE COURT: Anybody have questions for this
12 witness?

13 You may step down. Thank you.

14 MR. PATTEN: My last witness is Edra Blixseth.

15 THE COURT: If you could come forward to be
16 sworn, please?

17 EDRA BLIXSETH, WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MR. PATTEN:

20 Q. Please state your name.

21 A. Edra Blixseth.

22 Q. Ms. Blixseth, you were formerly married to Tim
23 Blixseth?

24 A. That's correct.

25 Q. Are you familiar with the various business enterprises

1 that one or both of you owned during the course of your
2 marriage?

3 A. Oh, pretty much.

4 Q. Are you familiar with the Desert Ranch?

5 A. I'm familiar with what we call "Desert Ranch", yes.

6 Q. Who owns Desert Ranch?

7 A. Tim received Desert Ranch in one of our many
8 settlements prior to the MSA.

9 Q. Okay. So the Prim claim that Mr. Guthals has been
10 questioning Mr. Greenspan about, that claim was owned by an
11 entity owned by your former husband, Tim Blixseth?

12 A. I don't know about an entity. When he -- it was in our
13 personal names. And when that was divided in the second
14 mini settlement, I believe it was, that went to Tim. And
15 it was in his personal name at the time. And if it's
16 changed to an entity now, I'm not aware of it.

17 MR. PATTEN: Okay, that's all I have. Thank you.

18 THE COURT: Does anyone have any questions for
19 Ms. Blixseth?

20 You may step down. Thank you.

21 THE WITNESS: Thank you.

22 MR. PATTEN: I have no further witnesses, Your
23 Honor.

24 THE COURT: Okay. Does anyone else have
25 witnesses?

1 Mr. Patten.

2 MR. PATTEN: There's one more matter, Your Honor.

3 THE COURT: Okay.

4 MR. PATTEN: The liquidating trust is anticipated
5 to take some time period to set up. About a month ago at
6 an emergency hearing - maybe a little bit longer - the
7 debtors were instructed not to interfere with a prospective
8 sale of the Farcheville Chateau. Just so that, I guess,
9 the record is clear and the debtors understand their duties
10 and powers and obligations, I would move the Court to
11 clarify that, pending the establishment of the liquidating
12 trust, which will then have authority over Farcheville,
13 that during that gap period, that the debtors have the
14 authority to control the affairs of the entities that own
15 the Farcheville Chateau.

16 THE COURT: Anyone have any objection to that,
17 wish to add to that?

18 Mr. Chehi.

19 MR. CHEHI: The prepetition lenders have no
20 objection to that, Your Honor. And, in fact, under the
21 settlement agreement, we have a special interest in
22 Farcheville at this point.

23 And I think what Mr. Patten and we had discussed
24 asking the Court for a clarification is that, to the extent
25 that the debtors exercise their rights with respect to the

1 subsidiaries and the Farcheville asset during this gap
2 period, pending the establishment of the liquidating trust,
3 that will not be in derogation or conflict with your prior
4 order entered on the emergency motion which required people
5 not to interfere with the sale of Farcheville. And we
6 agree that the debtors' appropriate management of those
7 issues would not, at this point, be an interference in
8 contravention of your order.

9 THE COURT: Okay. I appreciate the comment.

10 Mr. Patten.

11 MR. PATTEN: And I agree with what Mr. Chehi just
12 said. That's what I intended.

13 THE COURT: Mr. Amsden.

14 MR. AMSDEN: Your Honor, just a point of
15 clarification: We understand from French counsel that the
16 Farcheville entity is in an involuntary French bankruptcy.
17 And that may not be accurate information. But what we
18 understand is that proceeding is proceeding in France. And
19 so with respect to the ultimate control of that asset and
20 any recovery from that asset, my understanding is that that
21 is in other country's jurisdiction.

22 THE COURT: Well, from the standpoint of to the
23 extent debtors in this gap period have any -- well, need to
24 do anything, obviously this has been an asset that I've
25 been very concerned about for some time, and I'm going to

1 direct that Debtors do anything that is within their
2 organizational powers with various entities to see what the
3 status is and to proceed accordingly in this gap period --

4 MR. AMSDEN: Mine was just a --

5 THE COURT: -- to maximize that asset, which I've
6 always felt should be done. I appreciate your comment to
7 the Court, though, about possible involuntary status of
8 some proceeding over there. Obviously, it may be an item
9 that has an impact by French government.

10 MR. AMSDEN: And, Your Honor, mine was just a
11 point of information; no more.

12 THE COURT: Okay, thank you. Obviously, debtors
13 should check into that and see what the deal is and act
14 accordingly.

15 MR. PATTEN: Your Honor, if I understand the
16 procedure that we're following here, the debtor, Credit
17 Suisse, and CrossHarbor will submit the term sheet to the
18 Court as an amendment to the proposed plan.

19 THE COURT: Apparently when -- the exhibit, is it
20 finished, that is being worked on by Mr. Green and
21 Mr. Levy?

22 MR. CHEHI: That's right. When the transactional
23 attorneys have finalized that attachment to the term sheet,
24 I believe that term sheet, with the attachment, you know,
25 fully executed, will be filed in the court as a public

1 record with a notice so that everyone has access to that.
2 And then the parties would plan to, over the course of this
3 week, as soon as possible, modify the existing plan to
4 incorporate and conform it to the term sheet terms and the
5 transactions contemplated thereby and then file that,
6 also -- (inaudible.)

7 THE COURT: Yes, this Court would certainly want,
8 I think, one document so that people aren't wondering where
9 the provisions are that are governing.

10 MR. CHEHI: And I believe the parties have also
11 agreed submitting an agreed form of confirmation order that
12 would - if the Court is inclined to confirm the plan and
13 approve the settlement pursuant to the plan - submit an
14 order accomplishing all of that at the same time the
15 modified plan is submitted. And dual-tracking beginning
16 today, as soon as possible, the debtors will resolicit the
17 prepetition lenders with the assistance of the agent so
18 that it can be accomplished electronically in addition to
19 hard-copy solicitation to seek their revote and reballoting
20 on the plan as it will be modified pursuant to the term
21 sheet. And they will receive a copy of the term sheet with
22 that solicitation and appropriate solicitation letters.

23 MR. PATTEN: But we'll need -- I think we'll need
24 an order of the Court directing that prepetition lenders be
25 resolicited in having a deadline fixed for the submission

1 of ballots.

2 THE COURT: We'll issue an order to that effect
3 as well as that there can be electronic transmission to
4 various, various people and have members so that -- to
5 expedite that process. We'll do so.

6 MR. PATTEN: Very good.

7 MR. CHEHI: And just to close the record, Your
8 Honor, we had filed an objection to confirmation of the
9 plan asserting various grounds, and those are hereby
10 withdrawn. To the extent that the Court is approving this
11 settlement and the plan as modified, we would not be
12 asserting these objections in that circumstance.

13 THE COURT: Okay, thank you. Mr. Patten.

14 MR. PATTEN: And just a point of clarification,
15 You Honor. And without making any presumptions regarding
16 the outstanding objections, is the Court issuing a
17 tentative or preliminary order confirming the plan subject
18 to the reballoting and the other documents that have just
19 been described, or --

20 THE COURT: Or what?

21 MR. PATTEN: Or is it being held in abeyance
22 until all of these documents come in, and so forth?

23 THE COURT: Well, I'm sure what Mr. Whitmore is
24 going to ask is that he have a chance to, if he doesn't
25 agree with the language in the amended plan, to file an

1 objection. I suspect that's where he's at.

2 MR. PATTEN: Okay.

3 THE COURT: And he's right on your left arm,
4 so --

5 MR. PATTEN: All right. And he usually is.

6 MR. WHITMORE: You're absolutely correct, Your
7 Honor. I think that there ought to be some -- in addition
8 to the resolicitation of whoever they decide to resolicit,
9 I think that some sort of backup date should be set just in
10 case the modified plan and all the -- and the trust
11 agreement and all the schedules, when they get filed along
12 with a confirmation order, if that can all be worked out,
13 that's great; but absent that, there ought to be, you know,
14 some opportunity to, to file a very limited objection and
15 to be heard on the remaining outstanding points.

16 THE COURT: Well, you know, I would really like
17 to just do it by notice and have whatever dispute you have
18 worked out with the parties that are involved, to be quite
19 honest. You know, I realize we've spent a lot of time
20 together in the last week, or so. We know how sometimes
21 that takes a little time to get accomplished. But I would
22 really like to get to confirmation, subject to
23 conditionally upon them submitting the amended plan with
24 the incorporation of the term sheet terms.

25 MR. WHITMORE: And all we're asking for is an

1 opportunity to see it all --

2 THE COURT: I know.

3 MR. WHITMORE: -- and have an opportunity to file
4 an objection and be heard on that, in the hope and
5 expectation that that won't be necessary, but just as a
6 matter of due process.

7 THE COURT: Okay. I'm going to take about a
8 10-minute break just so I can stretch a little bit. And
9 I'll be back with a ruling.

10 (A brief recess was taken.)

11 THE COURT: Please be seated, as you get back to
12 your chair. Also, I didn't mean to overlook the
13 opportunity for anyone. Many of you already have made your
14 appearances. If there's anyone who's not made an
15 appearance for the record and you want to make sure you're
16 identified as having been here for whatever reason, you
17 certainly can come to the podium and make your appearances.
18 Certainly, I didn't want to exclude anyone. Okay, no one
19 wants to do that.

20 So, obviously, this is the evidentiary hearing on
21 confirmation, so I'll preface that if there's anybody who
22 wants to put any more on the record, this is the time to do
23 it. Okay.

24 MR. CHEHI: I'll just ask the Court to take
25 notice of the entire record of the Chapter 11 cases for

1 purposes of a decision of the confirmation order.

2 THE COURT: Certainly. Oh, it looks like we have
3 some people back that maybe have been drafting, or maybe
4 just for this.

5 Just from a timeline and a procedure standpoint,
6 and it's been kind of the rule of this Court: When we
7 started getting a lot of stipulations and additions to a
8 plan that's before me, my experience has been the first
9 thing that happens down the road, if there is an issue,
10 somebody doesn't have the right document because they
11 forgot that something was incorporated by agreement or by
12 stipulation as to what governs what, or whatever. So based
13 on that, as we've already discussed, I do want a modified
14 plan incorporating the things that have occurred that are
15 inconsistent with where we are today. Obviously, that was
16 filed almost two months ago, about six weeks ago. Things
17 have changed. So I do want one document.

18 Also, I already did the order on electronic
19 transmission for the purposes of getting material out and
20 balloting out for prepetition investors. I think that was
21 for -- was that for Class 3 and Class 8? Is that correct?

22 UNIDENTIFIED SPEAKER: Yes, Your Honor.

23 UNIDENTIFIED SPEAKER: That's correct, Your
24 Honor.

25 THE COURT: And that can be done by electronic

1 transmission. And I guess I'm wondering: Can those be
2 back by Friday?

3 MR. CHEHI: I think it would be likely that most,
4 if not all, would be able to respond within that period of
5 time, assuming the solicitation goes out later today or the
6 first thing tomorrow.

7 THE COURT: Okay. Mr. Birinyi.

8 MR. BIRINYI: From the debtors' perspective,
9 that's certainly reasonable, Your Honor.

10 THE COURT: Okay. Let's shoot for that, then,
11 unless there's an issue that comes to my attention later
12 this week that, for whatever reason, something didn't --
13 you know, the transmission lines were out, or something.

14 MR. BIRINYI: I think that those same parties
15 managed to get hard ballots in within a six-day period of
16 receiving the solicitation package because we got the --
17 through glitches, we got the addresses late.

18 THE COURT: Okay. And so I guess what I'm
19 understanding, they'll receive --

20 MR. BIRINYI: They'd receive the electronic
21 notification today. And if we can do electronic submission
22 of the ballots, I'd suspect we'd probably have them
23 actually back, most of them, Wednesday or Thursday rather
24 than Friday.

25 THE COURT: Okay.

1 MR. BIRINYI: But if the deadline is Friday --

2 MR. CHEHI: I'd give it to Friday, you know, with
3 leave to extend if the actual results are, you know, short
4 of, you know, actually getting --

5 THE COURT: So ordered. So we've got the
6 document, we've got the term sheet. It looks like they're
7 working on the attachments. That will be part of the
8 record, as well.

9 As it relates to confirmation and the remaining
10 objections - some of which may be resolved, some may not -
11 basically, I'm going to, upon receipt of the modified plan
12 and the receipt of the ballots, rule on the, on the
13 confirmation and rule on the objections that are pending.

14 And I guess I'm hopeful that there's a
15 resolution, to the extent there can be, on the outstanding
16 objections within that time period, as well, so that I'm
17 not faced with something coming in that -- what I'm trying
18 to do is not have to go to another hearing on this. And
19 that's why I feel that since this is the evidentiary
20 hearing, I'm going to rule on the objections as I see them,
21 based on the evidence and the record, and go from there.

22 Mr. Chehi.

23 MR. CHEHI: And, Your Honor, will you also be
24 ruling either today or conditionally today on approval of
25 the settlement terms as presented to the Court, based upon

1 the evidence, and the like?

2 THE COURT: I'm glad you brought that up. I just
3 kind of overlooked it.

4 Based upon Rule 9019, my consideration of the
5 testimony, of the term sheet, negotiations that went into
6 that, and based upon the - (inaudible) - property factors,
7 the settlement set forth in the term sheet and its
8 attachments is approved. We'll issue an order to that
9 effect.

10 Is there anything I've missed? Is everybody kind
11 of clear where I'm at?

12 MR. BIRINYI: Would you like us to, when we file
13 the modified plan, file a notification of which remaining
14 objections are outstanding? When we file the modified
15 plan, would you like a notification of which objections we
16 haven't been able to resolve?

17 THE COURT: Yes, I would, absolutely. And, also,
18 you'll submit a proposed confirmation order.

19 MR. BIRINYI: Correct, Your Honor, and proposed
20 findings.

21 THE COURT: That's fine, yes. Anything else?
22 Mr. Whitmore.

23 MR. WHITMORE: Yes. I guess it would just be
24 helpful to know from a timing perspective when these
25 documents are going to be filed.

1 THE COURT: Within the next, well, three days,
2 two days.

3 MR. CHEHI: They'll be filed by the end of the
4 week, Your Honor, and they'll be circulated. And
5 Mr. Whitmore will get a copy of them once they're in a form
6 appropriate to be circulating around for comments. I think
7 the debtors or counsel will take the laboring oar on that
8 and get some comments. But you should see that as soon as
9 they start to materialize.

10 THE COURT: I certainly want all the parties and
11 all the people who have been involved to get copies.

12 MR. WHITMORE: And if we could just have copies
13 for, you know, a couple of days before an order is entered,
14 or a day, as a matter of process, that would be
15 appreciated.

16 THE COURT: Okay. Thank you, Mr. Whitmore.

17 Mr. Patten.

18 MR. PATTEN: We will make sure that Mr. Whitmore
19 is included on the circulation of the drafts as they
20 progress.

21 THE COURT: Yes. Oh, that was the other thing:
22 Did you wish to, in the modification and the plan, do a --
23 I call it "red line" and you call it "black line", the
24 final black line as well as the final plan without, without
25 black line? Do you wish to file for ease of people

1 reviewing?

2 MR. PATTEN: When we file the plan, we'll file a
3 notice with a black-lined copy attached.

4 THE COURT: Okay, very well. Mr. Levy?

5 MR. LEVY: You Honor, just on a procedural
6 matter, we're nearly complete with finalizing our comments
7 and revisions to the - (inaudible) - creditor agreement.
8 However, we have a hand markup. It will take -- you know,
9 they would have it all word-processed, and we'll be
10 traveling back. I think we'd be prepared to file the
11 settlement term sheet and have the attachment following the
12 next day or two.

13 THE COURT: Very well, very well. I appreciate
14 your quick work on that.

15 MR. LEVY: Okay, thank you.

16 MR. MOORE: Your Honor.

17 THE COURT: Mr. Moore.

18 MR. MOORE: Paul Moore for the record again.

19 Just one more clarification: The Court's approving the
20 extension of the DIP loan which is part of the settlement
21 agreement?

22 THE COURT: It is approved --

23 MR. MOORE: Thank you.

24 THE COURT: -- for the extension. And,
25 Mr. Moore, just for the record so that I don't mix it with

1 another date that I might have written down, what is the
2 extension dates?

3 MR. MOORE: I think it was the later of the --
4 the earlier of the closing date or June 30th, as I recall.

5 UNIDENTIFIED SPEAKER: That's correct.

6 MR. MOORE: Oh, I got it right.

7 THE COURT: Okay, that's correct. Is there
8 anything else?

9 Again, thank you all. I have appreciated getting
10 to know you professionally through these last few months.
11 Obviously, it's been a packed time period. Obviously,
12 there's still some matters out there that we'll probably be
13 seeing some of you, at least, in. So, anyway, again, thank
14 you all, and good travels.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the electronic recording of the proceedings in the
above-entitled matter, all done to the best of my skill and
ability.

Jonny B. Nordhagen